

SUPPORTING STATEMENT
Information with Respect to Certain Foreign- Owned Corporations
TD 8353 and REG-127199-15 (TD 9796)
OMB Control Number 1545-1191

15696. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 6038A generally requires that 25-percent foreign-owned U.S. corporations and foreign corporations engaged in a trade or business within the United States must furnish information annually on an information return, Form 5472 (OMB#1545-0123), and maintain records relating to transactions between such corporations and any foreign related parties. Additionally, section 6038A requires a foreign related party that engages in a transaction with a foreign-owned U.S. or foreign corporation to authorize that corporation to act as its agent for IRS summons purposes. TD 8353 provides appropriate guidance for affected reporting corporations and related parties.

REG-127199-15 (TD 9796) treat domestic disregarded entities wholly owned by a foreign person as domestic corporations separate from their owners for the limited purposes of the reporting, record maintenance and associated compliance requirements that apply to 25 percent foreign-owned domestic corporations under section 6038A of the Internal Revenue Code. This information will enhance the United States' compliance with international standards of transparency and exchange of information for tax purposes and will strengthen the enforcement of U.S. tax laws. The collection of information in these final regulations is in §§ 1.6038A-2 and 1.6038A-3. The likely respondents are foreign-owned domestic entities that are disregarded as separate from their owners.

15697. USE OF DATA

The records required to be maintained and the information reported on Form 5472 will be used in auditing foreign-owned U.S. corporations and foreign corporations. The information is needed to satisfy the IRS's obligations under U.S. tax treaties, tax information exchange agreements and similar international agreements, as well as to strengthen the enforcement of U.S. tax laws.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. **METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

The Internal Revenue Service is considering alternate ways to reduce burden on small business and other entities and has requested public comments. These regulations will not have a significant economic impact on a substantial number of small entities. The regulations will primarily affect a small number of foreign-owned domestic entities that do not themselves otherwise have a U.S. return filing requirement, and that the requirement to file a return for these entities will not impose a significant burden on them. Pursuant to section 7805(f), the proposed regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small entities.

6. **CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**

Consequences of less frequent collection would result in inaccurate recordkeeping, reporting transactions, and profit and loss statements. Increased issuing of subpoenas and summons to obtain records between reporting corporations and related parties.

7. **SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)**

There are no special circumstances requiring data collection to be inconsistent with guidelines in 5 CFR 1320.5(d)(2).

8. **CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS**

The proposed regulations were published as a Notice of Proposed Rulemaking in the *Federal Register* on December 10, 1990, (55 FR 50706), which provided the general public with a 60-day period in which to review and provide comments relating to any aspect of the proposed regulations. A public hearing was held on February 22, 1991. Final regulations were published in the *Federal Register* on June 19, 1991 (56 FR 28056).

The proposed regulations (REG-127199-15) were published as a Notice of Proposed Rulemaking in the *Federal Register* on May 10, 2016, and provided the general public with a 60 day period in which to review and provide comments relating to any aspect of the proposed regulations. No written comments on the proposed regulations were received, and no public hearing was requested or held.

Final regulations (TD 9796) were published in the *Federal Register* on December 13, 2016 (81 FR 89849).

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and return information are confidential as required by 26 U.S.C. 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No personally identifiable information (PII) is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 1.6038A-2 of the attached regulations advises taxpayers as to the requirement to complete Form 5472. The burden estimate for this requirement is reflected in the burden of Form 5472.

Section 1.6038A-3 of the attached regulations advises taxpayers as to the record maintenance requirement. A reporting corporation must keep the permanent books of account or records as required by section 6001 that are sufficient to establish the correctness of the Federal income tax return of the corporation, including information or records that might be relevant to determine the correct tax treatment of transactions with related parties.

<u>Number of Recordkeepers</u>	<u>Time per Recordkeeper</u>	<u>Total Annual burden hours</u>
64,000	10 hours	640,000 hours

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no capital/ start-up or ongoing operation/ maintenance cost associated with this information collection.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no estimated annualized cost to the federal government.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval and update the paperwork to include the final regulation.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis, and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.