

SUPPORTING STATEMENT
Internal Revenue Service
Return of U.S. Persons With Respect to Certain Foreign Partnerships
OMB No. 1545-1668

CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

In the Taxpayer Relief Act of 1997 (TRA 1997) Congress significantly modified the information reporting requirements with respect to foreign participants. The specific changes are as follows:

A. Section 6038. Prior to TRA 1997, section 6038 required U.S. persons that control a foreign corporation to furnish information about that corporation. TRA 1997 amended section 6038 so that it now also requires U.S. persons that control a foreign corporation to furnish information about that partnership. The IRS issued regulations that say controlling U.S. persons and 10% partners must report under 6038.

B. Section 6038B. Prior to TRA 1997, section 6038B required that certain transfers by U.S. persons to foreign corporations be reported. TRA 1997 expended section 6038B to require United States persons to also report certain transfers to foreign partnerships. The IRS issued regulations under section 6038B with respect to transfers to foreign partnerships in February, 1999. A person required to report under section 6038B is referred to in the form instructions as “category (3) filer”.

C. Section 6046A. Congress added section 6046A to the Code in 1982. Nevertheless, thus far the IRS has never required taxpayers to report under section 6046A. As originally enacted, section 6046A required U.S. persons to file a return reporting their acquisitions and dispositions of foreign partnership interests, as well as any substantial changes in their proportional foreign partnership interests. TRA 1997 modified section 6046A so that it now provides that acquisitions and dispositions must be reported only if the U.S. person directly or indirectly holds at least 10% interest in the partnership either before or after such acquisition or disposition. It also now provides that a change in a proportional interest must only be reported if the change is equivalent to at least a 10% interest in the partnership.

D. Section 721C. Until they were repealed as part of the Taxpayer Relief Act of 1997 (the 1997 Act), Public Law 105-34 (111 Stat. 788), section 1131, sections 1491 through 1494 imposed an excise tax on certain transfers of appreciated property by a U.S. person to a foreign partnership, which generally was 35 percent of the amount of gain inherent in the property. Congress believed that the imposition of enhanced information reporting obligations (including sections 6038, 6038B, and 6046A) with respect to foreign partnerships would eliminate the need for sections 1491 through 1494. Notwithstanding

these enhanced information reporting requirements, the 1997 Act granted the Secretary regulatory authority in section 721 (c) to override the application of the nonrecognition provision of section 721 (a) to gain realized on the transfer of property to a partnership (domestic or foreign) if the gain, when recognized, would be includible in the gross income of a person other than a U.S. person.

IRC Section 721(c) authorizes the IRS to issue regulations requiring gain to be recognized when appreciated property is contributed to a partnership if the built-in gain otherwise would be transferred to a foreign partner. Form 8838-P must be used to apply the gain deferral method.

. USE OF DATA

The information will be used by IRS to verify that United States persons are properly reporting foreign partnership tax items and for general statistics.

. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

Electronic filing of Form 8865, including all attached Schedules is currently available.

. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

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

Small businesses should not be disadvantaged as the form has been structured to request the least amount of information and still satisfy the requirements of the statute and the needs of the Service.

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

A less frequent collection on federal programs would result in the IRS unable to determine the correct amount of depreciation deduction that should be allowed on the tax return thereby engendering the inability of IRS to meet its mission.

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

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding Form 8838-P.

In response to the **Federal Register** notice dated August 24, 2017 (82 FR 40229), we received no comments during the comment period regarding Form 8838-P.

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

No payment of gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the “Business Master File (BMF)” system and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS 24.046-Customer Account Data Engine Business Master File. The Internal Revenue Service PIAs can be found at <https://www.irs.gov/uac/Privacy-Impact-Assessments-PIA>.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The burden estimate is as follows:

<u>Number of Form</u>	<u>Time per Responses</u>	<u>Total Response</u>	<u>Hours</u>
8865	3,300	20.44	67,452
8865 Sch. A	5,000	1.46	7,300
8865 Sch. A-1	4,000	1.42	5,680
8865 Sch. A-2	5,000	1.62	8,100
8865 Sch. B	1,000	21.79	21,790
8865 Sch. N	1,000	14.49	14,490
8865 Sch. K	1,000	38.51	38,510
8865 Sch. K-1	1,650	11.91	19,652
8865 Sch. K,K-1(15a)	3,500	3.36	11,760
8865 Sch. L	1,000	16.00	16,000
8865 Sch. M	1,000	3.37	3,370
8865 Sch. M-1	1,000	3.77	3,770
8865 Sch. M-2	1,000	3.36	3,360
8865 Sch. O	1,000	17.27	17,270
8865 Sch. P	1,000	6.57	6,570
8838 P	1,000	9.01	9,010
Total	32,450		254,084

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs. The primary cost to the government consists of the cost of printing Form 8838-P. We estimate that the cost of printing the form is \$502.50.

15. REASONS FOR CHANGE IN BURDEN

There is a change to the paperwork burden previously approved by OMB. We added a

new Form 8838P to the collection. The estimated burden is 1,000 respondents with a time per response equal 9.01 hours. We are making this submission to renew the OMB approval.

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses	32,450	0	1,000	0	0	31,450
Annual Time Burden (Hr)	254,084	0	9,010	0	0	245,074

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 form or 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.

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.