

SUPPORTING STATEMENT
Internal Revenue Service (IRS)
Purchase Price Allocations in Deemed Actual Asset Acquisitions
TD 8940
OMB Control Number 1545-1658

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 338 of the Internal Revenue Code provides rules under which a qualifying stock acquisition is treated as an asset acquisition (a “deemed asset acquisition”) when an appropriate election is made. Section 1060 provides rules for the allocation of consideration when a trade or business is transferred. The collection of information is necessary to make the election, to calculate and collect the appropriate amount of tax liability when a qualifying stock acquisition is made, to determine the persons liable for such tax, and to determine the bases of assets acquired in the deemed asset acquisition.

Section 1.338-2(e)(4) provides that if a target subject to a section 338 election was a controlled foreign corporation at any time during the portion of its taxable year that ends on its acquisition date, the purchasing corporation must deliver written notice of the election (and a copy of Form 8023, its attachments and instructions) to certain individuals. Section 1.338-2(e)(4)(iii) provides that the notice must contain certain information and a declaration.

2. USE OF DATA

The information will be used to calculate and collect the appropriate amount of tax liability when a qualifying stock acquisition is made, to determine the persons liable for such tax, and to determine the bases of assets acquired in the deemed asset acquisition.

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. We have no plans at this time to offer electronic filing because of the low volume compared to the cost of electronic enabling.

4. EFFORTS TO IDENTIFY DUPLICATION

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

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

There is no burden on small businesses or other small entities due to the inapplicability of the authorizing statute to this type of entity.

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

The information required is needed to verify compliance with Sections 338 of the Internal Revenue Code of the Treasury Regulations. A less frequent collection of taxes and tax information could adversely affect the government's effectiveness and would reduce the oversight of the public in ensuring compliance with Internal Revenue Code and hinder the IRS from meeting 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

In response to the Federal Register notice dated November 22, 2017 (82 FR 55711), we received no comments during the comment period regarding these regulations.

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 tax return information are confidential as required by 26 U.S.C. 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No personally identifiable information (PII) is collected by the IRS. The purchasing corporation must deliver written notice of the election (and a copy of Form 8023, its attachments and instructions) to certain individuals. The individual may be required to attach the information attached to the notice to certain returns and Privacy Act System of Records notice (SORN) would be issued for the system that stores the returns.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

We estimate the burden for this regulation to be as follows:

1. Time and manner of making election. Section 1.338-2(d) provides that a section 338 election will be made in accordance with the Form 8023 and its instructions. The burden associated with the requirement is reflected in the burden of Form 8023.

2. Procedure for making gain recognition election. Section 1.338-5(d)(3) provides that the gain recognition election, containing information specified in the form and its instructions, is made by

attaching a gain recognition statement to a timely filed Form 8023 for target. The burden associated with this requirement was previously approved by OMB under OMB #1545-1428.

3. Procedure for filing a combined return. Section 1.338-10(a)(4) generally provides that a combined deemed sale return may be filed for all of the targets from a single selling consolidated group. Section 1.338-10(a)(4)(iii) provides that the combined return must include an attachment containing certain information and a declaration. The burden associated with this requirement was previously approved by OMB under OMB #1545-1428.

4. Simultaneous joint election requirement. Section 1.338(h)(10)-1(d)(2) provides that a section 338(h)(10) election is made jointly by P and the selling corporation (or selling group or S corporation shareholders) on Form 8023 in accordance with the instructions to the form. The burden associated with this requirement is reflected in the burden of Form 8023.

5. Time and manner of reporting. Section 1.1060-1(e)(ii)(A) provides that both a seller and a purchaser must each file an asset acquisition statement on Form 8594. Section 1.1060-1(e)(ii)(B) provides that any subsequent adjustments be reflected in a supplemental asset acquisition statement on Form 8594. The burden associated with this requirement is reflected in the burden of Form 8594.

6. Notice requirement for U.S. persons holding stock in foreign target. Section 1.338-2(e)(4) provides that if a target subject to a section 338 election was a controlled foreign corporation at any time during the portion of its taxable year that ends on its acquisition date, the purchasing corporation must deliver written notice of the election (and a copy of Form 8023, its attachments and instructions) to certain individuals. Section 1.338-2(e)(4)(iii) provides that the notice must contain certain information and a declaration. We estimate that annually 45 respondents will make one response each, which will take an average of .56 hours, for an estimated total annual reporting burden of 25 hours.

26 CFR	Description	# Respondents	# Responses Per Respondent- Approximate	Total Annual Responses	Hours Per Response	Total Burden
1.338-2(e)(4)(iii)	Nomenclature and definitions; mechanics of the section 338 election.	45	1	45	.56	25

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.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB.

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

IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations 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.