

Supporting Statement  
Internal Revenue Service  
TD 9394 (Section 1446 Regulations;  
Form 8804-C - Certificate of Partner-Level Items to Reduce Section 1446 Withholding)  
OMB #1545-1934

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

A partnership with effectively connected taxable income allocable under section 704 to a foreign partner must pay a withholding tax under section 1446 (1446 tax) on that partner's allocable share of ECTI. A partnership pays its section 1446 tax in installments similar to a corporation's payment of its estimated tax. See section 1.1446-3(b). Temporary regulations under section 1.1446-6T provide when a partnership may consider certain deductions and losses of a foreign partner to reduce or eliminate the partnership's obligation to pay withholding tax under section 1446 on effectively connected taxable income allocable under section 704 to such partner. These regulations finalize the temporary regulations.

The foreign partner will use Form 8804-C, "Certificate of Partner-Level Items to Reduce Section 1446 Withholding," to certify to the partnership that either it has partner-level deductions and losses that can reduce the required 1446 tax on its ECTI or that its investment in the partnership is its only activity giving rise to effectively connected income, gain, loss or deduction. The foreign partner will also use Form 8804-C to update information previously certified the partnership for the same taxable year.

Form 8804-C will be a form a foreign partner would voluntarily submit to the partnership if it chooses to provide a certification that could reduce or eliminate the partnership's need to withhold 1446 tax. The partnership also voluntarily chooses whether or not to rely on the form in determining the amount of 1446 tax it withholds. A partnership that relies on the Form 8804-C must submit it to the IRS with Form 8813, "Partnership Withholding Tax Payment Voucher (Section 1446)," for the first installment period on which it relies on the original or any updated Form 8804-C to reduce its payment of 1446 tax. The partnership would also submit Form 8804-C to the IRS when it files the annual Form 8805, "Foreign Partner's Information Statement of Section 1446 Withholding Tax". The submission of Form 8804-C to the IRS is necessary so that the IRS can determine that the partnership correctly reduced the amount of 1446 tax it withholds and pays to the IRS.

The information to be provided on Form 8804-C and the requirements to submit the information to the IRS are substantially the same as that required under section 1.1446-6T. Section 1.1446-6T had no particular form for the partner to provide the information. Collection of this information was previously approved by OMB on September 22, 2005, under OMB control number 1545-1934. To ensure uniformity of the certificates and to reduce the likelihood of an inadvertently omitted item causing the certificate to be defective, section 1.1446-6 will provide for the collection of this information on Form 8804-C.

2. USE OF DATA

The information collected by the IRS will be used for audit and examination purposes and in determining whether credits and/or refunds should be issued.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS has 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 for use or adaptation from another source.

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

The collection of information requirement will not have a significant economic impact on a substantial number of small entities.

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

A less frequent collection of this information would not allow the IRS to audit and examine the purpose and to determine whether credits and/or refunds should be issued.

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 21, 2017 (82 55488), we received no comments during the comment period regarding TD 9394.

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

No payment or gift will be 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 related to 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 <http://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:

Section 1.871-10(d)(3) will require a partner that makes an election under section 871(d) or 882(d) of the Internal Revenue Code to treat income from real property located in the United States as effectively connected income to notify the partnership of such election. The submission of this information is mandatory when it applies.

Section 1.1446-4 defines a nominee as a U.S. person that holds an interest in a publicly traded partnership on behalf of foreign persons. The regulations require a nominee to notify the partnership in a statement attached to the Form W-9 the nominee submits to the partnership that it is a nominee holding interests on behalf of foreign partners. The submission of this information is voluntary.

Section 1.1446-3 requires a foreign trust or estate that is a partner in a partnership subject to section 1446 to issue a statement to its beneficiaries informing them of the amount of the credit under section 33 that the beneficiary is entitled to take for 1446 tax paid by the partnership.

Section 1.1446-3 requires a partnership making installment payment made on the partner's behalf.

| Authority                              | Description | # of Respondents | # Responses per Respondent | Annual Responses | Hours per Response | Total Burden |
|--|-------------|------------------|----------------------------|------------------|--------------------|--------------|
| Treasury Regulation §§ 1.446, 1.871-10 | TD 9394     | 1                |                            |                  | 1                  | 1            |
|  | 8804-C      | 1,000            |                            |                  | 18.70              | 18,700       |
| Total                                  |             | 1,001            |                            |                  |                    | 18,701       |

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

## 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

The primary cost to the government consists of the cost of printing Form 8804-C. We estimate that the cost of printing the form is \$ 2,500.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. IRS is making this submission to renew the OMB approval.

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 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.