

SUPPORTING STATEMENT
Internal Revenue Service
Certain Asset Transfers to a Tax-Exempt Entity
(T.D. 8802)
OMB Control No. 1545-1633

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Regulations section 1.337(d)-4 amends the Income Tax Regulations to require that taxable gain or deductible loss be recognized when a taxable corporation transfers all or substantially all of its assets to a tax-exempt entity. If a taxable corporation changes its status to a tax-exempt entity, that change is considered a transfer of all of the taxable corporation's assets to a tax-exempt entity. An exception in §1.337(d)-4(b)(1) provides that gain or loss is not recognized for assets transferred (or deemed transferred) from a taxable corporation that will be used in an activity of a tax-exempt entity the income from which is subject to tax under §511(a) of the Internal Revenue Code (which taxes the income from unrelated business activities of certain tax-exempt organizations). If the assets are used partly in an unrelated business activity and partly in other activities, then a part of the gain or loss is not recognized.

The taxable corporation's exception from gain recognition for assets that will be used partly or wholly in an unrelated business activity makes it important for the taxable corporation to know how the tax-exempt entity will use the assets transferred from the taxable corporation. Accordingly, §1.337(d)-4(b)(1)(A) provides that the taxable corporation may rely on a written representation from the tax-exempt entity as to its use of the property, using a reasonable method of allocation if the property is used partly in an unrelated business activity. The regulation does not require the tax-exempt entity to furnish this written representation.

2. USE OF DATA

The information will be used by the taxable corporation in computing the gain on an asset that will be fully or partially nontaxable due to the asset's use by the tax-exempt entity in an unrelated trade or business. The information may also be used by the IRS in determining the correct amount of tax on the transaction.

3. USE OF IMPROVED INFORMATION 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. The proposed regulations permit public notice to be published on a website. Because there are no reporting requirements associated with TD 8802, electronic filing is not possible.

4. EFFORTS TO REDUCE 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 tax-exempt entity is required to use a method of allocating use of an asset between an unrelated business activity and other activities that is consistent with the method it uses under existing law for allocating business expenses and depreciation between an unrelated business activity and other activities. See §1.512(a)-1(c) of the Income Tax Regulations.

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

Consequences of less frequent collection of recordkeeping by the taxable corporation to support its reporting of tax transactions would result in the IRS unable to determine when a taxable corporation properly compute the correct amount of tax under section 511(a) on gain or loss that is recognized under the regulations, that will be fully or partially non-taxable due to the asset's use by the tax-exempt entity; thereby endangering the inability of the IRS to meet its mission.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH THE 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 TD 8802.

In response to the *Federal Register* Notice (82 FR 57528), dated December 5, 2017, we received comments during the comment period regarding regulation section 1.337(d)-4 (Taxable-to-tax-exempt). However, these comments did not address the collection of information in the regulation. The collection of information concerned a representation

that a tax-exempt entity may make indicating the expected percentage of its income that would be unrelated business income under Code section 511(a). Many of the comments from this commenter concerned issues raised by commenters in 1997 after the notice of proposed rulemaking (REG-209121-89) was published in the Federal Register (62 FR 2064). The comments that were considered before adoption of the final regulations (TD 8802) were uploaded and are available at www.regulations.gov.

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) associated with this collection.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 1.337(d)-4(b)(1)(A) allows a taxable corporation to rely on a tax-exempt entity's written representation estimating the percentage of the future use of a taxable corporation's asset in the tax-exempt entity's activity taxable under section 511(a), using a reasonable method of allocation.

Authority	Document	# Respondents	# Responses Per Respondent	Annual Responses	Hours Per Response	Total Burden
1.337(d)-4	TD 8802	25	1	25	5 hrs.	125

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 ANNUAL 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. REASON FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission for renewal purposes only.

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 REQUIREMENT

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, or 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 pertaining 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 return information are confidential as required by 26 U.S.C. § 6103.