

SUPPORTING STATEMENT

Internal Revenue Service

(T.D. 8825) Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups

OMB # 1545-1434

9872. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 382 of the Internal Revenue Code applies to a loss corporation that has an ownership change. Generally, an ownership change occurs if there is a shift in the percentage ownership of stock of the loss corporation of more than fifty percentage points during a three-year period. If a loss corporation has an ownership change, the amount of its taxable income for a post-change taxable year that may be offset by its net operating losses arising before the ownership change is limited by an amount known as the section 382 limitation. The section 382 limitation for a taxable year after an ownership change is generally equal to the fair market value of the stock of the corporation immediately before the ownership change multiplied by the long-term tax-exempt rate (a rate of return published periodically in the Internal Revenue Bulletin).

Section 382(m)(5) provides regulatory authority for rules regarding the application of section 382 so that value, built-in gain and loss, and other items are not omitted or taken into account more than once in the case of any group of controlled corporations. For this purpose, a controlled group is generally a group of corporations described in section 1563(a).

The regulations are intended to implement the directive of section 382(m)(5). They require a member of a controlled group to reduce the value of its stock by the value of stock of other members of the controlled group that it owns on the date of an ownership change. Following this reduction, a member may elect to restore some or all of the value to another member. This election is contained in §1.382-8(h). The loss corporation must file a statement signed by it and any other member of the controlled group that elects to restore value to it indicating relevant information regarding the election.

9873. USE OF DATA

The data is used by the loss corporation and other members of the controlled group and the Internal Revenue Service to identify ownership changes, and to ensure that the loss limitation is properly imposed.

9874. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

There are no plans to provide electronic filing because electronic filing is not appropriate for the collection of information in this submission due to the requirement to attach the document of record. IRS publication, 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.

9875. EFFORTS TO IDENTIFY DUPLICATION

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

9876. 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.

9877. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

A less frequent collection on federal programs or policy activities could result in duplication of value in connection with a controlled group loss and would result in the IRS unable to determine the correct value thereby engendering the inability of IRS to meet its mission..

9878. 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).

9879. 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 May 7, 2018 (83 FR 20144), we received no comments during the comment period regarding TD 8825.

9880. 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

No sensitive personally identifiable information (PII) is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 1.382-8(h) provides that the loss corporation must file a statement signed by it and any other member of the controlled group that elects to restore value to it indicating relevant information regarding the election. It is estimated that the number of taxpayers subject to this requirement is 21,000, representing half of the estimated number of corporations that are members of controlled groups. It is estimated that the annual burden per respondent will be fifteen minutes, representing the time necessary to prepare the election to restore value. It is

estimated that the average frequency of preparing an election to restore value is once every six years, representing the frequency of ownership changes of corporations. Thus, the total annual burden will be $[21,000/6 = 3,500(\text{average number of annual respondents}) \times .25 \text{ hours} = 875 \text{ total annual burden hours}]$.

Authority	Description	# of Respondents	#Responses per Respondent	Annual Responses	Hours per Response	Total Burden
IRC §§1.382-8(h)	TD 8825	3,500	1	3,500	.25	875
Totals				3,500		875

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. 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.