

SUPPORTING STATEMENT

Internal Revenue Service
Asset Acquisition Statement
OMB# 1545-1021

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 1060 requires reporting to the IRS, as prescribed by regulations, by the buyer and seller of the total consideration paid for assets in an applicable asset acquisition. The information required to be reported includes the amount allocated to goodwill or going concern value. TD 8940 contained final regulations relating to deemed and actual asset acquisitions under sections 338 and 1060. Regulations section 1.1060-1 establishes the time for filing and the content of Form 8594.

The buyers and sellers of a group of assets that make up a business use Form 8594 when goodwill or going concern value attaches.

2. USE OF DATA

The collections of information are necessary to make an election to treat a sale of stock as a sale of assets, to calculate and collect the appropriate amount of tax in a deemed or actual asset acquisition, and to determine the bases of assets acquired in a deemed or actual asset acquisition. The information will be used by the IRS to verify that the buyer and seller are each allocating the same amount of consideration to an asset for purposes of determining gain or loss and basis.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

We are currently offering electronic filing for Form 8594.

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

It was determined that a final regulatory flexibility analysis was required for the collection of information in this Treasury decision under 5 U.S.C. 604. This analysis was set forth, in TD 8940, under the heading “Final Regulatory Flexibility Act Analysis.” Pursuant to section 7805(f) of the Internal Revenue Code, these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

TD 8940 explained, “This analysis is required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). This regulatory action is intended to simplify and clarify the current rules relating to both deemed and actual asset acquisitions. The current rules were developed over a long period of time and have been repeatedly amended. The IRS and Treasury believe these final regulations will significantly improve the clarity of the rules relating to both deemed and actual asset acquisitions.

The major objective of these final regulations is to modify the rules for allocating purchase price in both deemed and actual asset acquisitions. In addition, these final regulations replace the general rules for electing to treat a stock sale as an asset sale.

These collections of information may affect small businesses if the stock of a corporation which is a small entity is acquired in a qualified stock purchase or if a trade or business which is also a small business is transferred in a taxable transaction. Form 8023 (on which an election to treat a stock sale as an asset sale is filed) has been submitted to and approved by the Office of Management and Budget. With respect to Form 8023, the IRS estimated that 201 forms would be filed each year and that each taxpayer would require 12.98 hours to comply. Form 8594 (on which a sale or acquisition of assets constituting a trade or business is reported) has also been submitted to and approved by the Office of Management and Budget. With respect to Form 8594, the IRS estimated that 20,000 forms would be filed each year and that each taxpayer would require 12.25 hours to comply. These estimates have been made available for public comment and no public comments have been received. The regulations do not impose new requirements on small businesses and, in fact, should lessen any difficulties associated with the existing reporting requirements by clarifying the rules associated with deemed and actual asset acquisitions.

The collections of information require taxpayers to file an election in order to treat a stock sale as an asset sale. In addition, taxpayers must file a statement regarding the amount of consideration allocated to each class of assets under the residual method. The professional skills that would be necessary to make the election or allocate the consideration would be the same as those required to prepare a return for the small business.”

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

The consequences are that the IRS will have to spend more taxpayer assistance resources to collect this data through other means. This will compromise the Agency’s ability to enforce tax compliance. Tax compliance is a vital part of the government’s ability to meet its’ mission and serve the public.

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

On August 10, 1999, the IRS and the Department of Treasury (Treasury) published a notice of proposed rulemaking in the Federal Register (REG–107069–97, 64 FR 43462 (1999–36 I.R.B. 346)) containing proposed regulations under sections 338 and 1060 of the Internal Revenue Code of 1986. On January 7, 2000, the IRS and Treasury published temporary regulations in the Federal Register (REG–107069–97, 65 FR 1236 (2000–4 I.R.B. 332)) that are virtually the same as the proposed regulations published on August 10, 1999.

On April 5, 2000, a notice of proposed rulemaking (REG–107872–99, 2000–1 C.B. 911) under section 755 was published in the Federal Register (65 FR 17829). Only one commentator submitted written comments in response to the notice of proposed rulemaking, and no public hearing was requested or held.

On March 8, 2002, the IRS and the Department of Treasury published a notice of proposed rulemaking in the Federal Register (REG–118861–00, 2002–1 C.B. 651 [67 FR 10640]) (the proposed regulations) that sets forth rules applying to taxable acquisitions and dispositions of insurance businesses, including those that are deemed to occur when an election under section 338 of the Internal Revenue Code (Code) is made. Written comments were received in response to the proposed regulations, and a public hearing was held on September 18, 2002.

On September 16, 2004, the IRS and Treasury Department issued a notice of proposed rulemaking and temporary regulations in the Federal Register (69 FR 55740), modifying regulations under sections 338 and 1060 of the Internal Revenue Code (Code).

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 8594.

In response to the **Federal** register notice dated April 8, 2019, (84 FR 13989), the IRS received two (2) comment letters during the comment period regarding this collection.

In the first comment letter, the commenter stated “It would simplify the preparation, enhance the accuracy, and expedite the audit of the federal and state income tax returns if the asset classes on Part II Original Statement of Assets Transferred of Form 8594, *Asset Acquisition Statement* more closely corresponded to the classification of property on Part

III MACRS Depreciation of Form 4562, *Depreciation and Amortization* for a buyer, and to the sales or exchanges of property on Form 4797, *Sales of Business Property* for a seller.”

In response to the Agency request for comments to minimize burden on this collection of information, the commenter stated “A closer link between Form 8594, *Asset Acquisition Statement* and Form 4562, *Depreciation and Amortization* for a buyer, and Form 4797, *Sales of Business Property* for a seller, would allow an income tax return preparer to more quickly and accurately identify in the taxpayer's electronic fixed asset records the categories of assets transferred, for input into the income tax return preparation software.

This second comment letter recommends that the IRS consider the following suggestions to provide further clarity and transparency to Form 8594. “These changes should reduce the compliance burden on taxpayers and provide helpful information to the IRS:

- Add new boxes on Form 8594 to separately list assumed liabilities and capitalized transaction costs to match such items on Form 8883;
- Add a designated spot on Form 8594 for taxpayers to include the required reportable items under Line 6 of Part II, in lieu of requiring an additional attached statement;
- Update the Form 8594 instructions to:
 - o Describe situations where Form 8594 is required to be filed by only one party to the transaction, and
 - o Include a more comprehensive definition of the term "consideration."

The comments and a copy of the letter has been forwarded to the office responsible for revising these forms. This office will review and consult with Chief Counsel to see, based on current law, if there are any potential opportunities to enhance the correlation between these forms, minimizing the overall burden on the taxpayers.

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 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 “Individual Master File (IMF)” system and a Privacy Act System of Records notice (SORN) has been issued for this system under: Treas/IRS

24.030 CADE Individual Master File, and Treas/IRS 34.037 IRS Audit Trail and Security Records System. 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 regulations provide that a section 338 election is made by filing Form 8023. The burden for this requirement is reflected in the burden of Form 8023. The regulations also provide that both a seller and a purchaser must each file an asset acquisition statement on Form 8594. The burden for this requirement is reflected in the burden of Form 8594.

The burden estimate is as follows:

OMB Collectio n	Authorit y	Form	Annual Responses	Hours per Response	Total Burden
IRS 1545- 1021	IRC 1060	8594	1,310	17.49	22,910
	IRS TOTAL		1,310		22,910

The following regulations impose no additional burden. Please continue to assign OMB number 1545-1021 to these regulations.

1.1031(d)-1

1.755-2

1.1060-1

1.167(a)-5

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated April 8, 2019, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any responses from taxpayers on this subject. As a result, estimates of these cost burdens are not available currently.

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 Federal government cost estimate is based on a model that considers the following three cost factors for each information product: aggregate labor costs for development, including annualized start-up expenses, operating and maintenance expenses, and distribution of the product that collects the information.

The government computes cost using a multi-step process. First, the government creates a weighted factor for the level of effort to create each information collection product based on variables such as; complexity, number of pages, type of product and frequency of revision. Second, the total costs associated with developing the product such as labor cost, and operating expenses associated with the downstream impact such as support functions, are added together to obtain the aggregated total cost. Then, the aggregated total cost and factor are multiplied together to obtain the aggregated cost per product. Lastly, the aggregated cost per product is added to the cost of shipping and printing each product to IRS offices, National Distribution Center, libraries and other outlets. The result is the Government cost estimate per product.

The government cost estimate for this collection is summarized in the table below.

<u>Product</u>	<u>Aggregate Cost per Product (factor applied)</u>	<u>Printing and Distribution</u>	<u>Government Cost Estimate per Product</u>
Form 8594	\$ 10,936		\$ 10,936
(F 8594) Instructions	\$ 2,734		\$ 2,734
Grand Total	\$ 13,670		\$ 13,670
Table costs are based on 2018 actuals obtained from IRS Chief Financial Office and Media and Publications			
* New product costs will be included in the next collection update.			

15. REASONS FOR CHANGE IN BURDEN

There are no changes to the burden.

We are submitting this request 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 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 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.