

SUPPORTING STATEMENT
Internal Revenue Service (IRS)
Regulations Governing Practice Before the Internal Revenue Service
TD 9165
OMB Number 1545-1871

10352. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

TD 9165 contains final regulations revising the regulations governing practice before the Internal Revenue Service (Circular 230). The collections of information (disclosure requirements) in these final regulations are in §10.35(e). Section 10.35(e) requires a practitioner providing a covered opinion to make certain disclosures in the beginning of marketed opinions, limited scope opinions, and opinions that fail to conclude at a confidence level of at least more likely than not. In addition, certain relationships between the practitioner and a person promoting or marketing a tax shelter must be disclosed. A practitioner may be required to make one or more disclosures.

The collection of this material helps to ensure that taxpayers who receive a tax shelter opinion are informed of any facts or circumstances that might limit the use of the opinion. The collection of information is mandatory and affect individuals who practice before the Internal Revenue Service. These final regulations set forth best practices for tax advisors providing advice to taxpayers relating to Federal tax issues or submissions to the IRS. These final regulations also provide standards for covered opinions and other written advice.

In addition, the collection of information will assist the Commissioner, through the Office of Professional Responsibility, to ensure that practitioners properly advise taxpayers regarding the limits of tax shelter opinions provided and the need to obtain independent tax advice.

10353. USE OF DATA

As stated above, the disclosures will ensure that taxpayers are provided with adequate information regarding the limits of tax shelter advice that they receive, and also to ensure the practitioners properly advise of taxpayers of relevant information with respect to tax shelter opinions.

10354. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

Written advice and disclosures include electronic communications.

10355. EFFORTS TO IDENTIFY DUPLICATION

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

10356. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

The added disclosure requirements for tax shelter opinions imposed by these regulations will not have a significant economic impact on a substantial number of small entities because, as

noted in the document, the estimated burden of disclosures is minimal. Practitioners have the information needed to determine whether any of the disclosures will be required before the opinion is prepared and, for some disclosures, the regulations provide practitioners with the language to be included in the opinion. The proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

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

With less frequent collection, these regulations would not properly benefit individuals who practice before the Internal Revenue Service. As these final regulations set forth the best practices for tax advisors providing advice to taxpayers relating to Federal tax issues or submissions to the IRS, these final regulations also provide standards for covered opinions and other written advice. Without this information, government effectiveness could be adversely affected and would reduce the oversight of the public in ensuring compliance with the Internal Revenue Code.

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 September 12, 2019 (84 FR 48214), 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 USC 6103.

11. **JUSTIFICATION OF SENSITIVE QUESTIONS**

No personally identifiable (PII) is collected.

12. **ESTIMATED BURDEN OF INFORMATION COLLECTION**

31 C.F.R. § 10.35(e): Practitioners providing tax shelter opinions must make certain disclosures in the beginning of marketed tax shelter opinions, limited scope opinions and opinions that fail to conclude at a confidence level of at least more likely than not. In addition, practitioners

providing tax shelter opinions must disclose certain relationships between the practitioner and a person promoting or marketing the tax shelter. It is estimated that the above requirements will affect 100,000 practitioners per year, with a burden of approximately 8 minutes per respondent, for an annual burden of 13,333 hours.

	Description	# Respondents	# Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Burden
TD 9165	Regulations Governing Practice Before the Internal Revenue Service - Disclosures	100,000	1	100,000	8 minutes	13,333
	Totals	100,000	1	100,000	8 minutes	13,333

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. The agency 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

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