

SUPPORTING STATEMENT  
Internal Revenue Service  
Regulations Under Section 1258 of the Internal Revenue Code of  
1986;  
Netting Rule for Certain Conversion Transactions  
(TD 8649)  
OMB Control Number 1545-1452

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Under section 1258(a), gain generated by any position of a conversion transaction is treated as ordinary income to the extent of the applicable imputed income amount (AIIA). The (AIIA) is equal to the taxpayer's net investment in the transaction multiplied by the applicable rate, with certain adjustments. The applicable rate is generally 120 percent of the applicable Federal rate, determined as if the conversion transaction were a debt instrument.

Section 1258(a) may create a character mismatch because it focuses separately on each position of a conversion transaction and recharacterizes gain, but not loss. Section 1.1258-1(b)(1) of the regulations provides relief from this potential character mismatch in certain circumstances by allowing taxpayers to net gains and losses on the positions of certain conversion transactions for purposes of section 1258(a).

Under section 1.1258-1(b)(2) of the regulations, to be eligible for netting relief, the taxpayer must identify all the positions that are part of the conversion transaction. The identification must be made on the taxpayer's books and records before the close of the day on which the positions become part of the conversion transaction.

2. USE OF DATA

The data is used by the Internal Revenue Service to aid in administering the law and to prevent manipulation of the netting rules through the use of hindsight. This information will be used to determine whether the taxpayer has elected to net losses against gains before applying section 1258(a) and to verify that the taxpayer is properly reporting its conversion transactions that are subject to netting.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

There are no reporting requirements associated with TD 8649, therefore

electronic filing is not applicable. 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.

#### 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

There is minimal to no burden on small businesses or entities by this collection due to the inapplicability of the authorizing statute under section 1258 to this type of entity.

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

Consequences of less frequent collection on federal programs or policy activities could prevent IRS from determine whether the taxpayer has elected to net losses against gains before applying section 1258(a) and to verify that the taxpayer is properly reporting its conversion transactions that are subject to netting.

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 48216), we received no comments during the comment period regarding (TD 8649).

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 “Business Master file (BMF)” and a Privacy Act System of Records notice (SORN) has been issued for these systems under IRS 22.062 - Electronic Filing Records; IRS 24.030 - Customer Account Data Engine (CADE) Individual Master File; IRS 24.046 - CADE Business Master File (BMF); IRS 34.037 - IRS Audit Trail and Security Records System. The Internal Revenue Service PIA’s 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

Section 1.1258-1(b)(2) of the regulations requires the taxpayer to identify all the positions that are part of the conversion transaction to be eligible for netting relief. We estimate that 50,000 investors will identify the positions of one or more conversion transactions and it will take them from 0.05 hour to 10.0 hours annually to make and retain identification, with an estimated average of 0.1 hour. The total burden for this recordkeeping requirement is 5,000 hours.

The estimated recordkeeping burden estimates are:

Authoritie s (IRC)	Docume nt	# Respondents	# Responses Per Respondent	Annual Responses	Time Per Response	Total Burden
1.1258- 1(b)(2)	TD 8649	50,000	1	50,000	.10hrs. or 6mins.	5,000 hrs.
Totals		50,000	1	50,000	.10hrs. or 6mins.	5,000 hrs.

## 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. We are 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

We believe 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.