

## **SUPPORTING STATEMENT**

Internal Revenue Service

Election Out of Subchapter K for Producers of Natural Gas

OMB # 1545-1338

### **1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Section 761(a) authorizes the Secretary to issue regulations permitting the Members of certain unincorporated organizations to elect to have the organization excluded from subchapter K.

This collection contains final regulations that amend the regulations that amend the regulations under section 761 of the Internal Revenue Code relating to the election out of subchapter K of chapter 1 of the Code. The final regulations contain certain requirements that must be met by co-producers of natural gas subject to a joint operating agreement in order to make or maintain an election under 761. The final regulations provide that the co-producers under a joint operating agreement must use one of two permissible methods, described in the regulations, in reporting income from gas sales and certain related deductions and credits.

### **2. USE OF DATA**

The reporting requirement applies to all members of unincorporated organizations that operate under a gas balancing agreement in effect on the effective date and that seek to maintain an election out of subchapter K. These members must file the Form 3115 and the additional information with their timely filed return for their first tax year beginning on or after the effective date.

The filing of Form 3115 is required for changes in method of accounting. The form is used to monitor changes in method of accounting. The information required to be provided with the Form 3115 is to provide the Internal Revenue Service with essential information necessary to monitor compliance with the regulatory requirements.

### **3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

We have no plans to offer electronic filing because of low filing volume compared to cost of electronic enabling.

### **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. We have attempted to eliminate duplication within the agency wherever possible.

## **5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The proposed regulations do not impose a collection of information on small entities.

Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

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

The consequences of less frequent collection would be less compliance oversight of the filers. The IRS will not be able to determine certain requirements that must be met by co-producers of natural gas subject to a joint operating agreement in order to elect out of subchapter K of chapter 1 of the Internal Revenue Code. 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 September 16, 1992, a notice of proposed rulemaking (PS-103-90) was published in the Federal register (57 FR 42712) proposing amendments to the Income Tax Regulations (26 CFR part 1, 602) under section 761 of the Internal Revenue Code (Code). A notice of hearing relating to the proposed regulations was published in the same issue (57 FR 42720) and a public hearing was held on November 17, 1992. After consideration of all written and oral comments regarding the proposed amendments, the proposed regulations were adopted as revised in TD 8578.

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 the requirements outlined in these regulations.

In response to the *Federal Register* notice dated September 17, 2019 (84 FR 48997), we received no comments during the comment period regarding Form 6497.

**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)” system and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS 24.046-Customer Account Data Engine Business Master File. The Department of Treasury 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 collection of information is in section 1.761-2(d)(5)(i):

**“Method of making election.** (i) Except as provided in subdivision (ii) of this subparagraph, any unincorporated organization described in subparagraphs (1) and either (2) or (3) of paragraph (a) of this section which wishes to be excluded from all of subchapter K must make the election provided in section 761(a) in a statement attached to, or incorporated in, a properly executed partnership return, Form 1065, which shall contain the information required in this subdivision. Such return shall be filed with the internal revenue officer with whom a partnership return, Form 1065, would be required to be filed if no election were made. Where, for the purpose of determining such officer, it is necessary to determine the internal revenue district (or service center serving such district) in which the electing organization has its principal office or place of business, the principal office or place of business of the person filing the return shall be considered the principal office or place of business of the organization. The partnership return must be filed not later than the time prescribed by paragraph (e) of §1.6031-1 (including extensions thereof) for filing the partnership return with respect to the first taxable year for which exclusion from subchapter K is desired. Such partnership return shall contain, in lieu of the information required by Form 1065 and by the instructions relating thereto, only the name or other identification and the address of the organization together with information on the return, or in the statement attached to the return, showing the names, addresses, and identification numbers of all the members of the organization; a statement that the organization qualifies under subparagraphs (1) and

either (2) or (3) of paragraph (a) of this section; a statement that all of the members of the organization elect that it be excluded from all of subchapter K; and a statement indicating where a copy of the agreement under which the organization operates is available (or if the agreement is oral, from whom the provisions of the agreement may be obtained).”

Under that provision, consent is requested by filing Form 3115 and certain additional information.

The additional section 761 burden estimate is as follows:

<b>OMB Collection</b>	<b>Authority</b>	<b>Form</b>	<b>Annual Responses</b>	<b>Hours per Response</b>	<b>Total Burden</b>
IRS 1545-1338	IRC 761	----	10	.50	5
	<b>IRS TOTAL</b>		<b>10</b>		<b>5</b>

The burden of filing Form 3115 is already reflected in the burden estimates for Form 3115 (OMB Control Number 1545-0270).

The following regulation imposes no additional burden. Please continue to assign OMB number 1545-1338 to this regulation.

1. 761-2

### **13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

As suggested by OMB, our Federal Register notice dated September 17, 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**

There are no known annualized costs to the federal government.

### **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.