

SUPPORTING STATEMENT
Internal Revenue Service
Constructive Transfers and Transfers of
Property to a Third Party on Behalf of a Spouse
OMB # 1545-1751

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 1041 was added to the Internal Revenue Code by section 421 of the Tax Reform Act of 1984 (1984 Act), Public Law 98-369. Section 1041(a) provides that no gain or loss will be recognized on a transfer of property from an individual to (or in trust for the benefit of) a spouse or former spouse if the transfer is incident to a divorce. TD 9035 contains final and temporary regulations relating to the tax treatment of redemptions, during marriage or incident to divorce, of stock in a corporation owned by a spouse or former spouse.

Treasury Regulation section 1.1041-2 requires the collection of information to substantiate or support the tax treatment and reporting of certain redemptions by a corporation of stock from a spouse or former spouse. This information is required to establish the intent of the spouse or former spouse concerning the tax consequences of the transaction. The divorce or separation instruments, or a written agreement between the spouses or former spouse, are types of support that must be retained by the parties in order to obtain the tax treatment afforded in the regulations.

2. USE OF DATA

The record keeping requirements that section 1.1041-2 places on the spouses or former spouses are used by the Internal Revenue Service to determine whether the tax treatment elected by the spouses or former spouse of certain redemptions of stock is correct.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

There are no reporting requirements associated with TD 9035. 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

IRS has 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) of the Administrative

Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue 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 its impact on small business.

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

A less frequent collection will not enable the IRS to determine whether the tax treatment elected by the spouse or former spouse of certain redemptions of stock is correct and could result in being unable to meet its mission.

2. **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).

3. **CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS**

On August 3, 2001, the IRS and Treasury Department published in the Federal Register a notice of proposed rulemaking under section 1041 relating to certain redemptions, during marriage or incident to divorce, of stock in a corporation owned by a spouse or former spouse (REG-107151-00, 2001-2 C.B. 370 [66 FR 40659]). Written and electronic comments were solicited, and a public hearing was scheduled for December 14, 2001. Several comments were received and are discussed below. Because no requests to speak were timely received, the public hearing was cancelled. After consideration of all comments received, the proposed regulations under section 1041 are adopted as revised by this Treasury decision.

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.

IRS received no comments during the comment period in response to the **Federal Register** notice (84 FR 68017), dated December 12, 2019.

4. **EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

No payment or gift has been provided to any respondents.

5. **ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

6. **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 IRS 24.030--Customer Account Data Engine Individual Master File, formerly Individual Master File, and IRS 34.037--IRS Audit Trail and Security Records System. The Department of Treasury PIAs can be found at <http://www.treasury.gov/privacy/PIAs/Pages/default.aspx>.

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

7. **ESTIMATED BURDEN OF INFORMATION COLLECTION**

Section 1.1041-2(c) permits spouses or former spouses to treat redemption of stock of one spouse (the first spouse) as a transfer of that stock to the other spouse (the second spouse) in exchange for the redemption proceeds and a redemption of the stock from the second spouse in exchange for the redemption proceeds if they reflect their intent to do so in a written agreement or if a divorce or separation agreement requires such treatment. This information must be retained and is required for the spouses or former spouses to report properly the tax consequences of the redemption.

The estimated number of such transactions per year is 1,000. The estimated average annual burden per applicant to provide information required in section 1.1041-2(c) of the proposed regulations is ½ hour, and the total annual recordkeeping burden is 500 hours.

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
1.1041-2 Recordkeeping	Constructive Transfers and Transfers of Property to a Third Party on Behalf of a Spouse	1,000	1	1,000	.50	500
Totals		1,000		1,000		500

The following regulation imposes no additional burden. Please continue to assign OMB number 1545-1751 to this regulation.

8. **ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

As suggested by OMB, our Federal Register notice dated December 12, 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.

9. **ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT**

There are no known annualized costs to the federal government.

10. **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.

11. **PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION**

There are no plans for tabulation, statistical analysis and publication.

12. **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.

13. **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.