

SUPPORTING STATEMENT
Internal Revenue Service (IRS)
(TD 9704)
OMB Number 1545-1487

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

26 USC Section 367(e)(1) provides that a domestic corporation will recognize gain on section 355 distributions of stock or securities to foreign persons, to the extent provided in regulations. Section 367(e)(2) provides that sections 337(a) and (b)(1) will not apply to a domestic corporation's section 332 distributions to a foreign parent corporation that owns 80 percent of the domestic liquidating corporation as described in section 337(c). Section 6038B(a) requires a U.S. person who transfers property to a foreign corporation in an exchange described in sections 332 and 355 to furnish the Secretary of the Treasury with information with respect to the transfer, to the extent and manner provided in regulations.

The final regulations under section 367(e)(1) require gain recognition only for distributions of the stock or securities of foreign corporations to foreign persons. The final regulations under section 367(e)(2) generally require gain recognition when a domestic corporation liquidates into its foreign parent corporation and do not require gain recognition when a foreign corporation liquidates into its foreign parent corporation.

TD 9704 contains final and temporary regulations relating to the consequences to U.S. and foreign persons for failing to file gain recognition agreements (GRAs) or related documents, or to satisfy other reporting obligations, associated with certain transfers of property to foreign corporations in nonrecognition exchanges. The regulations are necessary to update and clarify the rules that apply when a U.S. or foreign person fails to file a GRA or related documents or to satisfy other reporting obligations. These regulations affect U.S. and foreign persons that transfer property to foreign corporations in nonrecognition exchanges.

2. USE OF DATA

The data collected under section 367(e)(1) will be used by the Internal Revenue Service to determine whether a taxpayer has correctly calculated its tax liability under section 367(e)(1). The data collected under section 367(e)(2) will be used by the Internal Revenue Service to determine whether a taxpayer is properly claiming an exemption from taxation. The information collected by under section 6038B will be used by the Internal Revenue Service to identify assets that have been transferred outside the U.S. taxing jurisdiction. TD 9704 explains the procedures for establishing that a failure to comply was not willful. The information in 1.6038B-1 explains how a taxpayer may submit a request for relief from the penalty.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

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. The IRS has attempted to provide taxpayers with the easiest way to make this regulatory requirement to include a justification statement with the amended return as simple and expedient as possible.

4. **EFFORTS TO IDENTIFY DUPLICATION**

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

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

There are no small entities affected by this collection.

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

Consequences of less frequent collection on federal programs or policy activities could consist of a decreased amount of taxes collected by the Service, inaccurate and untimely filing of tax returns, and an increase in tax violations. Failure to provide the justification statement and amended return timely, will create inconsistencies in the ability for taxpayers and IRS to comply with the tax laws.

1. **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 February 21, 2020 (85 FR 10263), 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**

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: Treas/IRS 24.046 BMF, Treas/IRS 34.047 Audit trail and security records system.

The Internal Revenue Service PIA's can be found a <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

Section 1.367(a)-1(f)(2) requires non-publicly traded domestic corporations making section 355 distributions of the stock or securities of a foreign corporation to identify distributees who are U.S. persons and certify the amount of stock or securities distributed to the U.S. persons. We estimate that this requirement will affect 15 respondents per year and take 4 hours each, for a total of 60 hours.

Section 1.367(a)-8(p)(2) requires publicly traded domestic corporations making section 355 distributions of the stock or securities of a foreign corporation to provide a statistical analysis (conducted by an unrelated party) to infer an amount of stock or securities that were distributed to distributees who are U.S. persons, in order to rebut a presumption that all such stock or securities were distributed to foreign persons. We estimate that this requirement will affect 2 respondents per year and take 20 hours each, for a total of 40 hours.

Section 1.367(e)-2(f)(2) contains various collection and reporting requirements in order for domestic corporations to qualify for nonrecognition of gain attributable to property distributed to a foreign parent corporation in a complete liquidation of the domestic corporation. Section 1.367(e)-2(c)(2)(B) and (C) contain various collection and reporting requirements in order for foreign subsidiary corporations to qualify for nonrecognition of gain attributable to the distribution of property used in a U.S. trade or business to a foreign parent corporation in a complete liquidation of the foreign subsidiary corporation. We estimate that the requirements contained in §§ 1.367(e)-2(b)(2) and 1.367(e)-2(c)(2)(B) and (C) will affect 100 respondents per year (200 total) and take 8 hours each, for a total of 1,600 hours.

Section 1.6038B-1(c)(4)iii requires a domestic corporation making a section 355 distribution of stock or securities of a foreign corporation to foreign persons to file a Form 926 with an added addendum describing the distributions to foreign persons. We estimate that the requirements contained in § 1.6038B-1(e)(3) will affect 17 respondents per year and take 3 hours each, for a total of 51 hours.

Section 1.6038B-1(e)(4) requires domestic corporations making distributions of property to a foreign parent corporation in complete liquidation of the domestic corporation to file a Form 926 and identify thereon the property distributed to the foreign parent corporation. We estimate that the requirements contained in § 1.6038B-1(e)(4) will affect 180 respondents per year and take 4 hours each, for a total of 720 hours.

Thus, the total burden under OMB #1545-1487 (TD 9704) is 2,471 hours with 414 respondents.

	Description	# Respondents	# Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Burden
1.367(a)-1(f)(2)	foreign corporation to identify distributees who are U.S. persons and certify the amount of stock or securities distributed to the U.S. persons	15	1	15	4	60
1.367(a)-8(p)(2)	a statistical analysis (conducted by an unrelated party) to infer an amount of stock or securities that were distributed to distributees who are U.S. persons,	2	1	2	20	40
1.367(e)-2(f)(2)	collection and reporting requirements in order for domestic corporations to qualify for nonrecognition of gain attributable to property distributed to a foreign parent corporation in a complete liquidation of the domestic corporation	100	1	100	8 hrs	800
1.367(e)-2(c)(2)(B) and (C)	collection and reporting requirements in order for foreign subsidiary corporations to qualify for nonrecognition of gain attributable to the distribution of property used in a U.S. trade or business to a foreign parent corporation in a complete liquidation of the foreign subsidiary corporation	100	1	100	8 hrs	800
1.6038B-1(c)(4)iii	355 distribution of stock or securities of a foreign corporation to foreign persons to file a Form 926 with an added addendum describing the distributions to foreign persons	17	1	17	3	51
1.6038B-1(e)(4)	Form 926 and identify thereon the property distributed to the foreign parent corporation	180	1	180	4	720
Totals		414		414		2,471

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.

1. 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.