

**SUPPORTING STATEMENT**  
**Internal Revenue Service (IRS)**  
**Consent To Extend the Time To Assess Tax Under Section 367—Gain Recognition Agreement**  
**Form 8838**  
**OMB Number 1545-1395**

**1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

In accordance with Internal Revenue Code § 367, a U.S. person(s) who transfers stock or securities to a foreign corporation must file Form 8838. The transferor(s) may make a gain recognition election. As part of the gain recognition agreement, the transferor(s) must extend the statute of limitations so that the IRS may impose tax when the foreign corporation disposes of the transferred stock or securities. A gain recognition agreement allows the transferor(s) to defer the imposition of an excise tax on the transfer.

**2. USE OF DATA**

The IRS uses Form 8838 to indicate that the statute of limitations is in effect. The IRS can impose taxes and/or penalties when income is recognized. A United States transferor must file Form 8838 (or a similar statement) if it enters into a gain recognition agreement pursuant to section 367(a) with respect to the transferred property.

For purposes of section 367(a), the term “United States transferor” includes:

- A citizen or resident of the United States.
- A domestic corporation.
- A U.S. citizen, resident, or domestic corporation that is directly or indirectly a partner in a domestic or foreign partnership that transfers property to a foreign corporation. See Temporary Regulations section 1.367(a)-1T(c)(3).
- Any estate or trust (other than a foreign estate or trust under section 7701(a)(31)).

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

The agency offers electronic filing for Form 8838.

**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**

Small businesses should not be disadvantaged as the requirements are structured to request the least amount of information and still satisfy the requirements of the statute and the needs of the Service.

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

## **ACTIVITIES**

The information required is needed to verify compliance with section 367 of the Internal Revenue Code of the Treasury Regulations. A less frequent collection of taxes and tax information could adversely affect the government's effectiveness and would reduce the oversight of the public in ensuring compliance with Internal Revenue Code and hinder the IRS from meeting its mission.

### **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 July 20, 2020 (85 FR 43943), the IRS 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**

In accordance with the Privacy Act of 1974, Treasury has published its complete Privacy Act systems of records notices, which include all maintained records systems as of January 2, 2014; six systems have been amended, altered, or added since April 20, 2010, when the complete notices were last published. See 79 F.R. 209-261 and 79 F.R. 183-206, which was published on January 2, 2014.

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 Internal Revenue Service PIAs can be found at <https://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.

### **12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and the estimated burden for business filers is approved under 1545-0123, and are included in the estimates shown in the instructions for their individual or business income tax return. The estimated burden for all other taxpayers who file this form is shown below.

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
IRC § 367	Form 8838	666	1	666	8.23	5482
Totals				666		5482

**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**

The Federal government cost estimate is based on a model that considers the following three cost factors for each information product: aggregate labor costs for development, including annualized start-up expenses, operating and maintenance expenses, and distribution of the product that collects the information.

The government computes cost using a multi-step process. First, the government creates a weighted factor for the level of effort to create each information collection product based on variables such as; complexity, number of pages, type of product and frequency of revision. Second, the total costs associated with developing the product such as labor cost, and operating expenses associated with the downstream impact such as support functions, are added together to obtain the aggregated total cost. Then, the aggregated total cost and factor are multiplied together to obtain the aggregated cost per product. Lastly, the aggregated cost per product is added to the cost of shipping and printing each product to IRS offices, National Distribution Center, libraries and other outlets. The result is the Government cost estimate per product.

The government cost estimate for Form 8838 is summarized in the table below, it is not available for Form 8838. The 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.

<b>Product</b>	<b>Aggregate Cost per Product (factor applied)</b>	<b>Printing and Distribution</b>	<b>Government Cost Estimate per Product</b>
Form 8838	10,936	0	10,936
<b>Grand Total</b>	<b>10,936</b>	<b>0</b>	<b>10,936</b>
Table costs are based on 2016 actuals obtained from IRS Chief Financial Office and Media and Publications			
* New product costs will be included in the next collection update.			

**1. REASONS FOR CHANGE IN BURDEN**

There are no changes being made to the form at this time. 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.