

**Supporting Statement**  
**Internal Revenue Service**  
**U.S. Withholding Tax Return for Dispositions by Foreign  
Persons of U.S. Real Property Interests and Statement  
of Withholding on Dispositions by Foreign Persons of  
U.S. Real Property Interests**  
**Forms 8288 and 8288-A**  
**OMB Control Number 1545-0902**

**1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Section 1445 of the Internal Revenue Code requires transferees to withhold tax on the amount realized from sales or other dispositions by foreign persons of U.S. real property interests. Form 8288 is used to transmit the withholding. Form 8288-A is stamped by the IRS upon receipt to indicate that the withholding was received, and a copy is sent to the transferor. The transferor must attach the stamped copy to any Federal income tax return or claim for refund filed in order to get credit for the withholding. Section 1446(f) of the Internal Revenue Code requires transferees to withhold tax on the amount realized from sales or other dispositions by foreign persons of interests in partnerships if any portion of the gain on any disposition of the interest in the partnership would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States.

On May 13, 2019, REG-105476-18 (84 FR 21198) was released to the public. This document contains proposed regulations implementing certain sections of the Internal Revenue Code, including sections added to the Internal Revenue Code by the Tax Cuts and Jobs Act, that relate to the withholding of tax and information reporting with respect to certain dispositions of interests in partnerships engaged in the conduct of a trade or business within the United States. The proposed regulations affect certain

foreign persons that recognize gain or loss from the sale or exchange of an interest in a partnership that is engaged in the conduct of a trade or business within the United States, and persons that acquire those interests. The proposed regulations also affect partnerships that, directly or indirectly, have foreign persons as partners.

**2. USE OF DATA**

This withholding serves to collect U.S. tax that may be owed by the foreign person.

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

There is no plan to offer electronic filing for this collection due to the low volume of filers.

**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**

A foreign partner must directly or indirectly transfer an interest in a partnership that is engaged in a trade or business within the US and the foreign partner must recognize a gain from the transfer. Accordingly, this provision is limited to partners and partnerships that have the resources necessary to participate in a cross-border enterprise; this limitation, therefore, excludes small entities from the scope of these rules.

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

The information must be collected to ensure that tax is being withheld, as applicable, both on the amount realized from sales or other dispositions by foreign persons of U.S. real property interests and on the amount realized from the disposition of a partnership interest if any portion of the gain from the disposition would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States. The consequences are that the IRS will have to spend more taxpayer assistance resources to collect this data through other means. This will compromise the Agency's ability to enforce tax compliance. Tax compliance is a vital part of the government's ability to meet its mission and serve the public.

**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).

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

The proposed regulations (REG-105476-18), released May 13, 2019 (84 FR 21198), provided for written or electronic comments. Any comments and requests for a public hearing had to be received by July 12, 2019. A summary of these comments or requests will be included with the release of any final regulations.

**3. 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. Privacy Act System of Records notice (SORN) has been issued for these systems under: Treas/IRS 24.046 BMF Treas/IRS, and 34.037 Audit Trail and security records system. The Internal Revenue Service PIA's 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**

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
IRC 1445	Form 8228	80,000	1	80,000	17.49	1,399,200
	Form 8228-A	87,500	1	87,500	3.93	343,875
	Form 8288-C	70,000	1	70,000	.25	17,500
Totals				237,500		1,760,575

Burden estimates for business filers (i.e. partnerships, corporations) are being reported and are approved 1545-0123. The estimate of burden that is being reported under 1545-0902 reports only the burden imposed on all other filers (i.e. trusts and estates).

The following regulation imposes no additional burden. Please continue to assign OMB number 1545-0902 to these regulations:

1.1445-2(d)(2)	1.445-6(g)
1.1445-2(d)(3)(ii)	1.445-2(c)(3)
1.1445-3(b)	1.897-2(h)(2)
1.1445-3(g)	1.897-2(h)(4)
1.1445-4(a), (b)	1.1445-1(c),
	(d)
1.1445-5(b)(2)(ii)	1.1445-5(b)(5)
1.1445-5(c)(3)	1.897-5T(e)
	(1)(iii)
1.1445-6(b)	1.1445-
	2(c)(3)
1.1446(f)-1 thru -7	

### **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 this collection is summarized in the table below.

<u>Product</u>	<u>Aggregate Cost per Product (factor applied)</u>	<u>Printing and Distribution</u>	<u>Government Cost Estimate per Product</u>
Form 8288	18,955		18,955
Form Instructions 8228	8,202		8,202
Form 8288A	17,770		17,770
Form 8288-C	TBD		TBD
<b>Grand Total</b>	<b>44,927</b>		<b>44,927</b>
Table costs are based on 2018 actuals obtained from IRS Chief Financial Office and Media and Publications			
* New product costs will be included in the next collection update.			

## **15. REASONS FOR CHANGE IN BURDEN**

REG-105476-18 (84 FR 21198), proposes regulations implementing certain sections of the Internal Revenue Code, including sections added to the Internal Revenue Code by the Tax Cuts and Jobs Act, that relate to the withholding of tax and information reporting with respect to certain dispositions of interests in partnerships engaged in the conduct of a trade or business within the United States.

The collection of information in proposed § 1.1446(f)-2(d)(1) will be provided on Forms 8288 and 8288-A by the transferee to the IRS and is mandatory if the transferee withholds tax under section 1446(f)(1).

These forms will be used by the transferee to report and pay any tax under section 1446(f)(1) and proposed § 1.1446(f)-2. The information provided in proposed § 1.1446(f)-3(d) by the partnership to the IRS will be used by the partnership to report and pay any tax under section 1446(f)(4) and proposed § 1.1446(f)-3 and will be provided on new Form 8288-C.

Data for Forms 8288 and 8288-A represent preliminary estimates of the total number of interests in partnerships, other than publicly traded partnership interests, engaged in the conduct of a trade or business in the United States that will be transferred by foreign persons.

Data for Form 8288-C represent preliminary estimates of the total number of transferees on whom partnerships must withhold tax under section 1446(f)(4) if the transferees do not fully withhold tax under section 1446(f)(1).

This will increase the Form 8288 estimated returns by 70,000 and the estimated annual burden by 1,224,300 hours. The Form 8288-A estimated returns

will also by 70,000 and the estimated annual burden by 275,100 hours. The new Form 8288-C will increase burden by 70,000 responses and an estimated burden increase of 17,500 hours. Forms will be updated in the next revision cycle.

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses	237,500	210,000 0	0	0 0	0 0	27,500
Annual Time Burden (Hr)	1,760,575	1,516,900 0	0	0 0	0 0	243,675

**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**

IRS believes 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. EXCEPTION 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 if 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.