

SUPPORTING STATEMENT

Internal Revenue Service

TD 9082, Guidance under Sections 897, 1445, and 6109 to require use of Taxpayer Identifying Numbers on Submission under the Section 897 and 1445
TD 9751, PATH Act Changes to Section 1445
OMB Control Number **1545-1797**

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Under section 897, a foreign transferor of a U.S. real property interest (USRPI) is generally taxed on gain from the disposition of the USRPI as if the taxpayer were engaged in a U.S. trade or business and as if such gain were effectively connected with a trade or business under section 871 or 882 (ECI). To ensure the collection of the tax, the transferee of the USRPI generally has a withholding tax obligation under section 1445, which is generally 10 percent of the gross amount paid over to the transferor.

TD 9082, published August 5, 2003 (68 F.R. 46081), contains final and temporary regulations to require the use of taxpayer identifying numbers on submissions under sections 897 and 1445. The regulations are necessary to properly identify foreign taxpayers for which submissions are made for the reduction or elimination of tax under sections 897 and 1445. The regulations also address certain additional issues under section 1445.

TD 9751, published February 19, 2016 (81 F.R. 3421), contains final and temporary regulations relating to the taxation of, and withholding on, foreign persons upon certain dispositions of, and distributions with respect to, United States real property interests (USRPIs). The regulations reflect changes made by the Protecting Americans from Tax Hikes Act of 2015 (the PATH Act). In addition, the regulations update certain mailing addresses listed in regulations under sections 897 and 1445. These regulations affect certain holders of USRPIs and withholding agents that are required to withhold tax on certain dispositions of, and distributions with respect to, USRPIs.

2. USE OF DATA

Taxpayers request withholding certificates from the IRS to reduce or eliminate the amount of withholding tax under section 1445. A withholding certificate that is issued by the IRS prior to the disposition of the USRPI serves to notify the withholding agent that no withholding or reduced withholding is required. If an application for a withholding certificate is submitted before or on the date of the transfer (so it is considered to be pending with the Service at the time of transfer), the withholding agent is not required to file a withholding tax return and pay over the withholding tax until 20 days after the date the IRS mails the withholding certificate or notice of denial. See section 1.1445-1(c)(2) (A).

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

There are no plans to provide electronic filing because electronic filing is not appropriate for the collection of information in this submission due to the requirement to attach the document of record.

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

The collection of information requirement will not have a significant economic impact on a substantial number of small entities.

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

Taxpayers request withholding certificates from the IRS to reduce or eliminate the amount of withholding tax under section 1445. A less frequent collection would prevent the taxpayer from applying this benefit and hinder the IRS from meeting its mission.

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

In response to the Federal Register notice dated December 4, 2020 (85 FR 78407), we received no comments during the comment period regarding this guidance.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

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 Internal Revenue Service 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 in these final regulations are in sections 1.1445–2(d)(2) and 1.1445–3. These collections of information are required to notify the IRS of dispositions of U.S. real property interests by foreign persons that otherwise are subject to taxation under section 897 and the collection of a withholding tax under section 1445.

Under section 1.1445-2(d)(2), a transferee is not required to withhold tax on a disposition of a U.S. real property interest if the transferor notifies the transferee that the transferor is not required to recognize any gain or loss with respect to the transfer because of the operation of a nonrecognition provision of the Internal Revenue Code. The transferee must provide a copy of the notice of nonrecognition to the IRS within 20 days of the transfer. The IRS receives on average 50 notices of nonrecognition under section 1.1445-2(d)(2). The estimated average annual burden per applicant to report these types of transactions is 2 hours, and the total annual reporting burden is 100 hours.

Under section 1.1445-3, the withholding tax may be reduced or eliminated pursuant to a withholding certificate issued by the IRS. If the withholding certificate is issued by the IRS prior to the disposition of the USRPI, it serves to notify the withholding agent that no withholding or reduced withholding is required. If an application for a withholding certificate is pending with the Service at the time of transfer, the withholding agent is not required to file a withholding tax return and pay over the withholding tax until 20 days after the date the IRS mails the withholding certificate or notice of denial.

The IRS receives on average 4,300 withholding certificate applications (Form 8288-B) annually covered under OMB control number 1545-1060. The withholding certificates dealing with nonrecognition exchanges under section 1031 and exclusions from income under section 121 constitute a small percentage of the total withholding certificates applied for in a year. Therefore, we estimate the number of withholding certificates addressed by this collection to be approximately 100. The estimated average annual burden per applicant to report these types of transactions is 5 hours, and the total annual reporting burden is 500 hours.

The total burden is 600 hours.

Authority	# Respondents	# Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Burden
1.1445-2(d) (2)	50	1	50	2	100
1.1445-3)	100	1	100	5	500
Totals	150		150		600

Please continue to assign OMB number 1545-1797 to these regulations:

1.1445-2

1.1445-3

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. At the present time, the IRS estimates an annual governmental cost to be nominal.

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

IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunset 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.

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.