Supporting Statement
Internal Revenue Service
TD 9866 (REG-951A) and Notice 2020-69 (S Corporation Guidance under Section 958 (Rules for Determining Stock Ownership) and Guidance Regarding the Treatment of Qualified Improvement Property under the Alternative Depreciation System for Purposes of the QBAI Rules for FDII and GILTI (NOT-114860-20)
OMB Control Number 1545-2291

1. Circumstances Making the Collection of Information Necessary.

The collection of information contained in Notice 2020-69 concerns attachment of a prescribed statement to an original or amended federal income tax for 2019 and 2020 in order to elect the relief described in this section.

On June 21, 2019, the Treasury Department and the IRS published final regulations (T.D. 9866) in the Federal Register (84 FR 29288) under § 951A (final regulations). The final regulations adopted "aggregate treatment" with respect to income inclusion amounts arising from section 951A (the global intangible low tax income inclusion or GILTI) for partnerships. Under aggregate treatment, for purposes of determining the GILTI inclusion amount of any partner of a domestic partnership, each partner is treated as proportionately owning the stock of a controlled foreign corporation (CFC) owned by the partnership within the meaning of § 958(a) in the same manner as if the domestic partnership were a foreign partnership. Because only a U.S. person that is a U.S. shareholder can have a GILTI inclusion amount, a partner that is not a U.S. shareholder of a partnership-owned CFC does not have a GILTI inclusion amount determined by reference to the partnership-owned CFC. Section 1.951A-1(e)(1) applies to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end. See §1.951A-7. S corporations are treated as partnerships for purposes of subpart F of part III of Subchapter N of the Internal Revenue Code (Code). See § 1373.

Section 951A was added to the Internal Revenue Code by the enactment of Public Law No. 115-97, 131 Stat. 2054 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). Prior to its addition, S corporations (consistent with the treatment of domestic partnerships) were afforded "entity treatment" with respect to inclusions under subpart F. Under entity treatment, an S corporation determines its subpart F inclusion at the entity level. An S corporation shareholder takes into account the shareholder's pro rata share of the S corporation's subpart F inclusion, regardless of whether the S corporation shareholder itself is a U.S. shareholder of the CFC under § 951(b). See generally § 1366(a).

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) received comments after the publication of T.D. 9866 expressing concern with adopting the aggregate treatment for S corporations with accumulated earnings and profits (AE&P). The aggregate treatment provided in the final regulations, as

applied to S corporations with AE&P, does not result in a positive adjustment of their accumulated adjustments account (AAA) because the GILTI inclusion amount arises at the shareholder level, rather than at the S corporation level. See §1.951A-1(e). If an S corporation with AE&P distributes property to its shareholders, for example, to provide its shareholders with funds to pay the resulting federal income tax arising from their GILTI inclusion amount with respect to stock of CFCs owned by the S corporation, the S corporation would need an amount of AAA equal to the amount of that distribution to prevent the distribution from being included in such shareholders' gross income to the extent of AE&P. See generally § 1368(c). Although the S corporation could generate additional AAA as needed through a distribution from a CFC, comments have asserted that such an approach could result in foreign withholding taxes or undesired reductions in working capital that otherwise would be devoted to the CFC's businesses.

In response to these comments, the Treasury Department and the IRS are permitting S corporations with AE&P as of the date the subject Notice will be released to continue to apply entity treatment for as long as they still have "transition AE&P" on the first day of the taxable year if they make an election. Transition AE&P is the amount of AE&P the S corporation had on the date the notice is published. The election must also include the amount of transition AE&P.

For taxable years ending prior to the date of publication of the Notice and after June 22, 2019, the shareholders and the S corporation must all make the election and report the amount of transition AE&P. For taxable years ending after the date of the notice, the S corporation makes the election. The election must include the amount of transition AE&P. The S corporation must also maintain books and records to support the determination of transition AE&P consistent with the provisions of § 6001.

2. Purpose and Use of the Information Collection.

The IRS needs information concerning transition AE&P and if the election was made to know whether the S corporation and its shareholders are applying entity treatment. To complete the election statement, taxpayers must also maintain records concerning transition AE&P consistent with the provisions of § 6001 in order for the IRS to know whether the entity treatment should apply for a particular taxable year.

3. Consideration Given to Information Technology.

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

4. Duplication of Information.

The information obtained through this collection concerning the election is unique and is not already available for use or adaptation from another source. AE&P information is maintained by S corporations already, but the amount of AE&P on the date the notice is released will not otherwise be available to the IRS.

5. Reducing the Burden on Small Entities.

Small businesses should not be disadvantaged because this one-time election provides relief for S corporations from immediate effect of the aggregate treatment in T.D. 9866 and merely requires the filing of a white paper election with the federal tax return. S corporations should already be maintaining records concerning their AE&P (including currently reporting at least an estimate of that amount on schedule M-2 of their Form 1120-S).

6. Consequences of Not Conducting Collection.

The collection of information is a one-time election to inform the IRS that the S corporation and its shareholders are applying entity treatment. Without the election, the IRS will not be able to track how GILTI income is treated by the S corporation and its shareholders.

7. Special Circumstances.

There are no special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

8. Consultations with Persons Outside the Agency.

We received no comments during the comment period in response to the Federal Register notice (86 FR 12076), dated March 1, 2021.

9. Payment or Gift.

No payments or gifts will be provided to respondents.

10. Confidentiality.

In general, tax returns and tax return information are confidential as required by 26 U.S.C. § 6103, and only certain matters relating to taxability and deductibility are disclosable under 26 U.S.C. § 6110.

11. Questions of a Sensitive Nature.

There is no sensitive personally identifiable information (PII) in this collection.

12. Burden of Information Collection.

Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
Notice 2020-69	3,688	1	3,688	.5	1,844
Totals	**3,688**		**3,688**		**1,844**

13. Estimated Annual Cost to Respondents.

There are no capital/start-up or ongoing operation/maintenance costs associated with this information collection. The transition AE&P amount is also based on information the S corporation should already have been maintaining in its books and records.

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.

15. Reasons for Change in Burden.

There is no change in burden. This is an emergency extension of a currently approved collection. This collection will be added to the 1545-0123 during its annual renewal.

16. Plans for Tabulation, Statistical Analysis and Publication.

There are no current 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 leading taxpayers to believe that the revenue procedure will sunset as of the expiration date. Taxpayers are not likely to be aware that the Service may 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 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 the 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.