

SUPPORTING STATEMENT
Internal Revenue Service
TD 8395 (Special Valuation Rules)
OMB Control Number 1545-1241

1. **CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Section 2701(c)(3)(C) of the Internal Revenue Code provides that a transferor (or applicable family member) of a junior interest in an entity (*i.e.*, common stock in a closely held corporation) who retains a preferred interest in the same entity, may either waive treatment or elect to treat payments by the entity as qualified payments. Based on the valuation method set forth in the statute, such a waiver or election will affect the value of the gift of the junior interest for gift tax purposes.

Section 2701(d)(3)(A)(iii) of the Code provides that a taxpayer may elect to treat a late qualified payment by an entity as a taxable event and thereby recognize an increase in taxable gifts in the year of the election.

Section 6501(c) of the Code provides that the gift tax statute of limitations for assessment will run only if transfers subject to section 2701 and 2702 are adequately disclosed on a gift tax return.

The regulations provide guidance on how taxpayers make these elections, what information is required, and how (and in what detail) the transfer is to be disclosed on the gift tax return (Form 709).

2. **USE OF DATA**

The information will be used on audit to verify that the statutory elections have been made or waived and whether disclosure has been adequately made. In addition, the information is required to determine the proper increase in a transferor's taxable transfers upon the happening of a subsequent taxable event and to determine the applicable tax rate for such transfers.

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. 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 or use or adaption from another source.

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

There is no burden on small businesses or other small entities due to the inapplicability of the authorizing statute to this type of entity.

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

Consequences of less frequent collection on federal programs or policy activities, could result in taxpayers not reporting payments or increases from gift tax on returns or correct amount of tax due; thereby endangering the ability of the IRS to verify that taxpayers are complying with section 2701 of the code in order to make timely and accurate assessments.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances reporting 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 26, 2021 (86 FR 40138), IRS received no comments during the comment period regarding TD 8395.

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 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

Burden Estimation:

Section 25.2701-2(c) of the regulations sets forth rules pursuant to section 2701(c)(3)(C) of the Code that permits taxpayers to waive or elect payments by an entity as qualified payments. The election is made by attaching a statement setting forth the terms of the election to a Form 709, Federal Gift Tax Return. We estimate that this requirement will affect 150 taxpayers annually and that they will expend approximately .20 hours each in such activities. The total burden for this requirement is 30 hours.

In addition, section 25.2701-4(d) of the regulations sets forth rules pursuant to section 2701(d)(3)(A)(iii) of the Code that allows taxpayers to treat late entity payments as a taxable event and thereby increase taxable gifts in the year of the election. The election is made by attaching a statement setting forth the terms of the election to a Form 709, Federal Gift Tax Return. We estimate that this requirement will affect 20 taxpayers annually and that they will expend approximately .15 hours each in such activities. The total burden for this requirement is 3 hours.

Finally, section 301.6501(c)-l(e) of the regulations sets forth rules pursuant to section 6501(c) of the Code to provide guidance to taxpayers on how to report and describe transactions subject to section 2701 and 2702. The description of the transaction must be adequately shown on a Form 709, Federal Gift Tax Return. We estimate that this requirement will affect 1030 taxpayers annually and that they will expend approximately .45 hours each in such activities. The total burden for this requirement is 463 hours.

The total burden estimates for this collection are as follows:

Authority	Document	# Respondents	# Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Burden
IRC 2701	TD 8395	1,200	1	1,200	.413 hrs.	496
	Total	1,200				496

The following regulations impose no additional burden. Please continue to assign OMB number 1545-1241 to these regulations.

25.2701-2
25.2701-4
301.6501(c)-1

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.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. IRS 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

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. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement for this collection.

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.