

1SUPPORTING STATEMENT
Internal Revenue Service
TD-XXXX, Notice 2017-9
De Minimis Error Safe Harbor to the I.R.C. §§ 6721 and 6722 Penalties
OMB Control Number 1545-2301

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Notice 2017–09, De Minimis Error Safe Harbor provides guidance to implementing PL 114-113 (Protecting Americans from Tax Hikes Act) regarding the de minimis error safe harbor exceptions from information reporting penalties under Internal Revenue Code (IRC) sections 6721 and 6722.

Section 6721 imposes a penalty when a person fails to file an information return on or before the prescribed date, fails to include all of the information required to be shown on the information return, or includes incorrect information on the information return.

Section 6722 imposes a penalty when a person fails to furnish a payee statement on or before the prescribed date, fails to include all of the information required to be shown on the payee statement, or includes incorrect information on the payee statement.

Section 6722(c)(3)(B), effective for information returns required to be filed and payee statements required to be furnished after December 31, 2016, provides that an election that the de minimis error safe harbor exceptions to the section 6722 and section 6721 penalties not apply shall be made "at such time and in such manner as the Secretary may prescribe." The collection of information in the final regulations facilitates the making of this election through a voluntary third party disclosure. This third party disclosure is necessary for payees to be able to make the election provided for by section 6722(c)(3)(B). The collection of information also facilitates the revocation of this election, so that elections are not permanently binding. The revocation is also a voluntary third party disclosure. The voluntary notification by filers to payees regarding reasonable alternative manners to make the election also facilitates the election. This notification is also a voluntary third party disclosure. Finally, the collection of information in the final regulations includes the specified retention of record requirement that filers retain records of any election, revocation, or notification for as long as that information may be relevant to the administration of any internal revenue law. This mandatory record keeping requirement is necessary to facilitate compliance with information reporting requirements.

2. USE OF DATA

As explained in box 1 above, the voluntary third party disclosures are the means for a payee to make the election provided for by section 6722(c)(3)(B) or to revoke that election, and for filers to provide notification of reasonable alternative manners for the election. The mandatory record keeping requirement is necessary to facilitate compliance (i.e., enforcement by the IRS) with information reporting requirements. The agency does

not receive any information under this collection of information.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The final regulations allow payees significant flexibility in making the election under section 6722(c)(3)(B), including the use of electronic media where the filer has provided notification and is in agreement, leading to reduced burden. The final regulations also allow filers to make the notification through the use of electronic media.

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 IRS proactively works with both internal and external stakeholders to minimize the burden on small businesses, while maintaining tax compliance. The Agency also seeks input regarding the burden estimates from the public via notices and tax product instructions. The filers can make their election to have the safe harbor not apply electronically, which further reduces any burden to small businesses.

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

A less frequent collection would result in taxpayers being unable to support the election or the retraction of the election provided for by section 6722(c)(3)(B). The mandatory record keeping requirement is necessary to the Agency's ability to maintain voluntary compliance.

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

A notice of proposed rulemaking (NPRM) was published in the Federal Register on October 17, 2018, and provided the public a 60-day period in which to review and provide public comments relating to any aspect of the regulation as then proposed. The NPRM offered to hold a public hearing if any person who has submitted written comments requested one. No public hearing was held because no person requested one.

Several comments were received in response to the NPRM. The comments are addressed

in the preamble to the attached final regulations.

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

No payment or gift will be 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” and a Privacy Act System of Records notice (SORN) has been issued for these systems under IRS 24.046 BMF and IRS 34.047 Audit Trail and Security Records System. 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

It is anticipated that there will be 16,123,292 respondents annually and the per response time would be 3.7 minutes per respondent. Resulting in an annual total burden of 992,102 hours.

| Authority | Description | # of Respondents | # Responses per Respondent | Annual Responses | Hours per Response | Total Burden |
|--------------------------|-------------|------------------|----------------------------|-------------------|--------------------|----------------|
| 6721 & 6722(c) (3)(B) | Election | 10,057,746 | 1.603072099 | 16,123,292 | .0615322 | 992,102 |
| Totals | | | | 16,123,292 | | 992,102 |

The following regulations impose no additional burden. Please continue to assign OMB number 1545-2301 to these regulations.

- 301.6721-1
- 301.6722-1
- 301.6724-1
- 1.6045-1

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

This is a new information collection implementing PL 114-113 (Protecting Americans from Tax Hikes Act) regarding the de minimis error safe harbor exceptions from information reporting penalties under Internal Revenue Code (IRC) sections 6721 and 6722.

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 this 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 ON OMB FORM 83-I

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.