

SUPPORTING STATEMENT
Like-Kind Exchanges
(Form 8824)
OMB Number **1545-1190**

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 1031 of the Internal Revenue Code allows for the non-recognition of gain or loss on the exchange of business or investment property. Section 1043 allows for the non-recognition of gain from dispositions made by certain members of the executive branch of the Federal government because of a conflict of interest.

Form 8824 provides taxpayers with an easy method of determining whether a transaction qualifies for like-kind exchange treatment, the gain or loss, if any recognized because of the exchange, and the basis in the new property received in the exchange.

2. USE OF DATA

The information is used by the Internal Revenue Service (IRS) to verify the provisions of sections 1031 and 1043 have been met and that the deferral of gain (or loss) under those sections is allowable to the taxpayer.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

We are currently offering electronic filing for Form 8824.

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

This 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

A less frequent collection would result in the IRS being unable to determine the amount of gain deferred on the like-kind exchange which would result in less taxes being collected on any future sale of the property and therefore not allow the IRS to meet its mission.

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

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding Form 8824.

In response to the Federal Register notice dated September 14, 2023, (88 FR 63199). We received one comment letter during the comment period regarding Form 8824.

This comment letter was related to the instructions to Form 8824 regarding Section 1245 recapture. The taxpayer suggested modifying the instructions for line 21 to include a discussion of the non-1245 language and how it affects the gain recognized from section 1245 recapture. The comment letter was forwarded to the office, within the Tax Forms & Publication Division, for consideration and review in the upcoming revision cycle of the form and instructions. In response, and as part of our ongoing review of the instructions to Form 8824, efforts will be made to amend or clarify the example to address Ms. Foster's comment.

3. **EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

No payment or gift has been provided to any respondents.

4. **ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

5. **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 and IRS 34.037 IRS 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.

6. **ESTIMATED BURDEN OF INFORMATION COLLECTION**

Section 1031 requires individuals, partnerships, and other entities to report the exchange of business or investment property, and the deferral of gains from such transactions. Section 1043 allows certain members of the executive branch to defer the gain from conflict-of-interest sales. Form 8824, *Like-Kind Exchanges*, is used to report each exchange of business or investment property for property of a like kind. The total burden for these requirements is estimated to be 2,364,433 hours.

The Form 8824 burden estimate is as follows:

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
IRC 1031/1043	Form 8824	137,547	1	137,547	17.1900005	2,364,433
Totals		137,547		137,547		2,364,433

7. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

From our Federal Register notice dated September 14, 2023, no public comments were received on the estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Estimated Annualized Respondent Cost and Hour Burden

Authority	No. of Respondents	No. of Responses per Respondent	Total Responses	Average Burden (Hours)	Total Burden (Hours)	Hourly Wage Rate	Total Burden Cost
Form 8824	137,547	1	137,547	17.19	2,364,433	\$60.42	\$142,859,042
Totals	137,547		137,547		2,364,433		\$142,859,042

The IRS estimates the total annual cost to respondents at \$142,859,042. To arrive at this figure, the total burden hours of 2,364,433 were multiplied by \$60.42 per hour.

IRS anticipates that taxpayers may use an accountant in determining whether a transaction qualifies for like-kind exchange treatment, the gain or loss, if any recognized because of the exchange, and the basis in the new property received in the exchange.

The above Hourly Wage Rate is the May 2022 Bureau of Labor Statistics mean wage for "Accountants and Auditors" (Major Group (13-2011)) of \$41.70 times the wage rate benefit multiplier of 1.4488 (to account for fringe benefits) equaling a fully-loaded wage rate of \$60.42.

The benefits multiplier is estimated by dividing total compensation of \$43.26 by salaries and wages of \$29.86, based on Employer Cost for Employee

Compensation, June 2023 data, released September 12, 2023
<https://www.bls.gov/news.release/ecec.nr0.htm>).

8. 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 startup 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	\$ 60,404	\$ 0	\$ 60,404
Instructions	\$ 15,101	\$ 0	\$ 15,101
Grand Total		0	0
Table costs are based on 2023 actuals obtained from IRS Chief Financial Office and Media and Publications			

9. REASONS FOR CHANGE IN BURDEN

Substantial changes are being made to the form and instructions, based on Regulations sections 1.1031(a)-1(a)(3) and 1.1031(a)-3 (and IRC 1031 as updated by PL 115-97 (TCJA), section 13303). These rules limit the property

eligible for like-kind exchanges. Under these rules, only property meeting the definition of real property in IRC 1031 is like-kind property for purposes of like-kind exchanges.

IRS has made revisions to the form to include information about the property being given up and information about the property being received. This is increasing the burden by 1,699,164 hours due to a new statutory requirement.

	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 for this IC	137,547	0	0	0	0	137,547
Annual IC Time Burden (Hours)	2,364,433	1,699,164	0	0	0	665,269

We are making this submission to update the OMB approval.

10. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis, and publication.

11. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

The IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunsets as of the expiration date. Taxpayers are not likely to be aware that the IRS intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

12. EXCEPTIONS 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.