

## **SUPPORTING STATEMENT**

Internal Revenue Service

Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)  
Rev. Proc. 2010-19, Deemed Disposition By Canadian Emigrants Basis Adjustment  
OMB Control Number **1545-1354**

### **1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Internal Revenue Code (IRC) Section 7701(b) defines what constitutes both a resident and nonresident alien. IRC Section 6114 addresses when a taxpayer takes the position that a treaty of the United States overrules an internal revenue law.

Revenue Procedure 2010-19 provides guidance for individuals who emigrate from Canada and wish to make an election for U.S. federal income tax purposes. Article XIII (7) of the U.S-Canada Income Tax Treaty (the "Treaty"), as amended by the 2007 Protocol, provides for an election to any individual who emigrates from Canada to the United States, without regard to whether the individual is a U.S. citizen immediately before ceasing to be a resident of Canada (or would otherwise have been subject to U.S. tax on an actual disposition of property). If the individual is not subject to U.S. tax at that time, the effect of the election is to give the individual an adjusted basis for U.S. tax purposes equal to the fair market value of the property as of the date of the deemed alienation in Canada, with the result that only post-emigration gain will be subject to U.S. tax when there is an actual alienation. If the Canadian resident is also a U.S. citizen at the time of his emigration from Canada, or the Canadian resident would be subject to taxation in the United States on a disposition of the property, then the rule allows the U.S. citizen to accelerate the tax under U.S. tax law and allows tax credits to be used to avoid double taxation.

To take advantage of this election, this revenue procedure provides that the individual must attach documentation establishing the fair market value of the property at the time of the deemed alienation in Canada and confirming that built in gain (or loss if permitted) was recognized for Canadian tax purposes in the taxable year of the deemed alienation. The individual must also retain copies of this documentation, along with Form 8833, until the property is disposed of.

Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b), is filed to make the treaty-based return position disclosure.

This is a request to renew the OMB approval of an existing Information Collection (IC) tool (Form 8833).

### **2. USE OF DATA**

The data supplied on Form 8833 is used by the Internal Revenue Service (IRS) to verify

the election of a treaty-based return position disclosure. Regarding Revenue Procedure 2010-19, the IRS will use the information for audit purposes to confirm that such individual taxpayer, upon making the election provided in this revenue procedure, can get the appropriate adjustment to basis for U.S. tax purposes and can take advantage of foreign tax credits that may be available under the Code and the Treaty.

**3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

Electronic filing of Form 8833 is currently available.

**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**

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. This form can be filed electronically, which further reduces any burden to small businesses.

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

The information required is needed to verify compliance with Section 6114 or 7701(b) of the Internal Revenue Code. A less frequent collection of taxes and tax information could adversely affect the government's effectiveness and would reduce the oversight of the public in ensuring compliance with Internal Revenue Code and hinder the IRS from meeting 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).

**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 March 7, 2024 (89 FR 16621), we received no comments during the comment period regarding these regulations.

**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 “Individual Master File (IMF)” and a Privacy Act System of Records notice (SORN) has been issued for these systems under Treas/IRS 24.030 - Individual 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.

This Form is an attachment to the Federal tax return. The Privacy Act statement associated with this Form is listed in the Federal tax return instructions.

**12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

Rev. Proc. 2010-19 will relieve double taxation with respect to property that is subject to Canadian departure tax under Canada’s deemed disposition rules. We estimate that 100 respondents will make such election annually. The estimated burden per respondent will average 1 hour for an estimated total annual burden of 100 hours.

The time needed to complete, and file Form 8833 will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and the estimated burden for business filers is approved under 1545-0123 and are included in the estimates shown in the instructions for

their individual or business income tax return.

The burden included in 1545-1354 reflects the estimated burden for trust and estate filers and gift tax filers. It is anticipated that there will be 4,000 respondents that respond with an average response time of 6 hours, 23 minutes, for a total burden of 25,640 hours.

The burden estimate is as follows:

Authority	Description	# of Respondents	# Responses Per Respondent	Annual Responses	Hours Per Response	Total Burden
IRC 6114 and IRC 7701(b)	Form 8833	4,000	1	4,000	6 hrs., 23 min.	25,640
Article XIII (7)	Rev. Proc. 2010-19	100	1	100	1 hr.	100
Totals		4,100		4,100		25,740

**13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

From our Federal Register notice dated March 7, 2024, 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. As a result, estimates of these cost burdens are considered nominal.

**14. 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. These costs do not include any activities such as taxpayer assistance and enforcement.

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.

<b>Product</b>	<b><u>Aggregate Cost per Product (factor applied)</u></b>	<b><u>Printing and Distribution</u></b>	<b><u>Government Cost Estimate per Product</u></b>
Form 8833	\$24,107	\$0	\$24,107
<b>Grand Total</b>	<b>\$24,107</b>	<b>\$0</b>	<b>\$24,107</b>
Table costs are based on 2023 actuals obtained from IRS Chief Financial Office and Media and Publications.			

**1. REASONS FOR CHANGE IN BURDEN**

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

**2. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION**

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

**3. 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 regulation 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.

**4. 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.