SUPPORTING STATEMENT
(REG-102144-04)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 1503(d) denies to an affiliate the use of the dual consolidated loss of a domestic corporation that is subject to the income tax of a foreign country on its income without regard to whether such income is from sources in or outside such foreign country, or is subject to such tax on a residence basis ("dual resident corporation").

The regulation provides three exceptions to the general rule prohibiting the domestic use of a dual consolidated loss. Under one of these exceptions (no foreign use exception), the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner with whom the loss corporation files a consolidated return must: (1) demonstrate, to the satisfaction of the Commissioner, that there can be no foreign use of the dual consolidated loss at any time; and (2) prepare a statement and attach it to its tax return for the taxable year in which the dual consolidated loss is incurred. This statement must include an analysis under foreign law of the treatment of the losses and deductions composing the dual consolidated loss, and the reasons supporting the conclusion that there cannot be a foreign use of the dual consolidated loss by any means at any time.

Under a second exception, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must enter into an agreement (domestic use agreement) in which it certifies that no portion of the deductions or losses taken into account in computing the dual consolidated loss has been, or will be, used to offset the income of any other person under the income tax laws of a foreign country. The domestic use election is filed with the taxpayer's timely filed federal income tax return.

Under the proposed regulations, if certain events occur (triggering events) affecting the dual consolidated loss during the 7-year period following the year in which such dual consolidated loss was incurred (certification period), the taxpayer must recapture and report as income the amount of the dual consolidated loss (in some cases, reduced by subsequently earned income), and pay an interest charge. In order to facilitate compliance with the dual consolidated loss regulations, including the need to monitor potential triggering events, taxpayers who have filed a domestic use election must file annual certifications with their federal tax return certifying that there has been no foreign use of such dual consolidated losses.

2. USE OF DATA

The collection of information is necessary so that an exception may be provided to the general rule while still preventing the double-dipping of losses abuse that the statute was intended to eliminate.

The collection of information that requires proper tracking and documentation of losses makes it possible to provide taxpayers with a regulatory exception to the general disallowance of losses mandated in the statute.

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.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SAMLL BUSINESSES OR OTHER SAMALL ENTITIES

Not applicable.

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

Not applicable.

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

Not applicable.

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 was published in the **Federal Register** on **May 25, 2005 (70 FR 29868)** to provide the public a 60-day period in which to review and provide public comments relating to any aspect of the proposed regulation. The public hearing was cancelled because no request to speak

was received. However, the IRS and Treasury Department received a number of written comments which were discussed in the final regulation. The final regulation was published in the **Federal Register on March 19, 2007 (72 FR 12902)**.

In response to the **Federal Register Notice** dated **March 6, 2008 (73 FR 12251)**, we received no comments during the comment period regarding REG-102144-04.

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

Not applicable.

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

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Under §1.1503(d)-1(b)(14)(i) a foreign use of a dual consolidated loss is deemed to occur in the year in which it is made available for an offset. Under §1.1503(d)-1(b)(14)(ii)(C)(2)(i) the general rule does not apply with respect to an interest in a hybrid entity partnership or a hybrid entity grantor trust if either there is no dilution of such interest, or if there is a dilution in such interest, if the taxpayer demonstrates, to the satisfaction of the Commissioner that the person that acquired such interest was a domestic corporation. Such demonstration must be made on a statement that is attached to, and filed with the taxpayer's timely filed income tax return. We estimate that 60 taxpayers will submit the information described in §1.1503(d)-1(b)(14)(ii)(C)(2)(i), and that it will take approximately .5 hours to prepare the documentation. The total reporting burden is estimated to be 30 hours.

Section 1.1503(d)-1(c)(1) provides a reasonable cause exception such that any person that is permitted or required to file an election, agreement, statement, rebuttal, computation, or other information under the provisions of §§1.1503(d)-1 through 1.1503(d)-4 and who fails to make such filing in a timely manner may be able to demonstrate to the satisfaction of the Commissioner that such failure was due to reasonable cause and not willful neglect. In order to satisfy this requirement, once such person becomes aware of the failure, the person must attach all documents that should have been filed previously, as well as a written

statement setting for the reasons for failure to timely comply, to an amended income tax return that amends the return to which the documents should have been attached. We estimate that 10 taxpayers will submit the information pursuant to §1.1503(d)-1(c)(1), and that it will take approximately 5 hours to prepare the documentation. The total reporting burden is estimated to be 50 hours.

Under §1.1503(d)-2(d), a dual consolidated loss of a dual resident corporation that ceases to be a dual resident corporation cannot be used to offset the income of such corporation to the extent the income is "tainted income," as defined in § 1.1503(d)-2(d)(2)(i). In the absence of evidence establishing the actual amount of income that is attributable to holding tainted assets, the portion of a corporation's income in a particular year that is attributable to tainted assets is based on the formula described in §1.1503(d)-2(d)(ii). Section 1.1503(d)-2(d)(2)(ii) requires taxpayers to attach documentation establishing the actual amount of income that is attributable to tainted assets to their timely filed tax return for the taxable year in which such income is generated. We estimate that 20 taxpayers will submit the information described in §1.1503(d)-2(d)(2)(ii), and that it will take approximately .5 hours to prepare the documentation. The total reporting burden is estimated to be 10 hours.

Section 1.1503(d)-4(c)(2) provides that the domestic use limitation rule of §1.1503(d)-2(b) shall not apply if a statement is attached to a timely filed income tax return for the year in which the dual consolidated loss is incurred that includes an analysis supported by relevant foreign law concluding that no foreign use of the dual consolidated loss occurred in the year in which such loss was incurred, and no such use can occur in any other year by any means. We estimate that 5 taxpayers will submit the statement described in §1.1503(d)-4(c)(2), and that it will take approximately 2 hours to prepare the documentation. The total reporting burden is estimated to be 10 hours.

Section 1.1503(d)-4(d) provides that a consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner may file with their income tax returns an agreement whereby they elect to use the losses of the dual resident corporation or separate unit against the income of a domestic affiliate. We estimate that approximately 400 taxpayers will file10 or fewer of such elections. Each of those 400 taxpayers would take an average of two hours to prepare its §1.1503(d)-4(d) elections, for a total burden of 800 hours. We believe that 75 taxpayers will file between 11 and 30 of such elections. For those 75 taxpayers we estimate an average of 5 hours per taxpayer to prepare its §1.1503(d)-4(d) elections, for a total burden of 375 hours. We believe that 25 taxpayers will file over 30 of such elections. For those 25 taxpayers we estimate an average of 10 hours per taxpayer to prepare its §1.1503(d)-4(d) elections, for a total burden of 250 hours. The total reporting burden is estimated to be 1,425 hours.

Section 1.1503(d)-4(e)(2) provides that if an event described in §§1.1503(d)-4(e)(1)(ii) through (viii) occurs, it will not constitute a triggering event with respect to the dual consolidated losses if the taxpayer attaches a statement to its timely filed income tax return for the year of such event with an analysis demonstrating that there could be no foreign use of the dual consolidate loss at any time during the remaining certification period. We estimate that 5 taxpayers will submit the statement described in §1.1503(d)-4(e)(2), and that it will take approximately 2 hours to prepare the documentation. The total reporting burden is estimated to be 10 hours.

Section 1.1503(d)-4(f)(2)(iii)(A) requires certain taxpayers who acquire dual resident corporations or separate units as a result of certain transactions to file an agreement described in §1.1503(d)-4(d)(1) with their timely filed income tax return whereby they elect to assume the same obligations with respect to the dual consolidated loss as the corporation or consolidated group that filed the original domestic use agreement with respect to that loss. We estimate that approximately 100 taxpayers will file10 or fewer of such elections. Each of those 100 taxpayers would take an average of two hours to prepare its §1.1503(d)-4(d)(1) elections, for a total burden of 200 hours. We believe that 50 taxpayers will file between 11 and 30 of such elections. For those 50 taxpayers we estimate an average of 3 hours per taxpayer to prepare its §1.1503(d)-4(d) elections, for a total burden of 150 hours. We believe that 10 taxpayers will file over 30 of such elections. For those 10 taxpayers we estimate an average of 5 hours per taxpayer to prepare its §1.1503(d)-4(d) elections, for a total burden of 50 hours. The total reporting burden is estimated to be 400 hours.

Section 1.1503(d)-4(f)(2)(iii)(B) require certain taxpayers who are no longer the owner of a dual resident corporation or separate unit for which they filed an agreement under §1.1503(d)-4(d) to file a statement with their timely filed income tax return for the year in which they transfer ownership of such dual resident corporation or separate unit whereby they agree to be subject to the rules provided in § 1.1503(d)-4(h)(3). We estimate that approximately 100 taxpayers will file 10 or fewer of such statements. Each of those 100 taxpayers would take an average of two hours to prepare its §1.1503(d)-4(d)(1) statements, for a total burden of 200 hours. We believe that 50 taxpayers will file between 11 and 30 of such statements. For those 50 taxpayers we estimate an average of 3 hours per taxpayer to prepare its §1.1503(d)-4(d) statements, for a total burden of 150 hours. We believe that 10 taxpayers will file over 30 of such statements. For those 10 taxpayers we estimate an average of 5 hours per taxpayer to prepare its §1.1503(d)-4(d) statements, for a total burden of 50 hours. The total reporting burden is estimated to be 400 hours.

Section 1.1503(d)-4(g) requires taxpayers who have made an election and filed an agreement under §1.503(d)-4(d) and §1.1503(d)-4(f)(2)(iii)(A) to file an annual certification that the losses, expenses, or deductions that make up the dual consolidated loss have not been used to offset the income of another person

under the tax laws of a foreign country. We estimate that approximately 800 taxpayers will be required to file the annual certifications, and that it will take between .25 and .5 hours, with an average of approximately 300 hours to prepare the documentation.

Section 1.1503(d)-4(h)(2)(i) permits taxpayers to reduce the amount of dual consolidated loss they must recapture under §1.1503(d)-4(h) upon the occurrence of certain "triggering" events described in §1.1503(d)-4(e)(1) if they demonstrate to the satisfaction of the Commissioner that the dual resident corporation or separate unit is qualified for such offset by preparing a separate accounting. The separate accounting showing that the income that offsets the recapture amount is attributable only to that particular dual resident corporation must be filed with the taxpayer's timely filed income tax return. We estimate that approximately 10 taxpayers will wish to rebut the presumption of the amount of recapture, and that it will take approximately .5 hours to prepare the documentation. The total reporting burden is estimated to be 5 hours.

Section 1.1503(d)-4(h)(2)(ii) permits taxpayers to reduce the amount of interest charge imposed under §1.1503(d)-4(h)(1)(ii) upon the occurrence of certain "triggering" events described in §1.1503(d)-4(e)(1). This section requires the taxpayer to demonstrate that the net interest owed would have been less if the taxpayer had filed an amended return for the taxable year in which the loss was incurred, and for any other affected taxable years up to and including the taxable year of recapture, treating the loss as a loss subject to the restrictions of §1.1503(d)-2(b). The taxpayer must prepare a computation demonstrating the reduction in the net interest owed, and it must be attached to the taxpayer's timely filed income tax return. We estimate that approximately 10 taxpayers will wish to rebut the presumption of the amount of recapture, and that it will take approximately .5 hours to prepare the documentation. The total reporting burden is estimated to be 5 hours.

Section 1.1503(d)-4(h)(3)(iii) requires taxpayers who have made an election under §1.1503(d)-4(f)(2)(iii)(A) with respect to dual consolidated losses with respect to which a subsequent triggering event occurs to prepare a statement computing the recapture amount provided under §1.1503(d)-4(h)(3)(iii)(B) and attach it to the taxpayer's timely filed income tax return for the year in which the triggering event occurs. We estimate that 10 taxpayers will be required to file this statement, and that it will take approximately 1 hour to prepare the documentation. The total reporting burden is estimated to be 10 hours.

Section 1.1503(d)-4(h)(4)(i) provides that the recapture amount generally cannot be offset by the dual resident corporation's or separate unit's current, carryover, or carryback losses. Under §1.1503(d)-4(h)(4)(ii), if the taxpayer demonstrates that the loss carryovers are attributable to the dual consolidated loss being recaptured, the recapture amount can be offset by that portion of the carryover. We estimate that 10 taxpayers will file this statement, and that it will take

approximately 1 hour to prepare the documentation. The total reporting burden is estimated to be 10 hours.

The total burden for all of the above requirements is 2,665 hours.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS.

As suggested by OMB, our **Federal Register Notice** dated **March 6, 2008 (73 FR 12251)**, requested public comments on 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. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUAL COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

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

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

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 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.