

## Supporting Statement

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

Section 382(1)(5) is intended to provide relief from the application of the section 382 limitation for bankruptcy reorganizations in which the pre-change shareholders and qualified creditors maintain a substantial continuing interest in the loss corporation. The final regulations of Section 1.382-3(o) concern option attribution rules for purposes of identifying stock ownership in order to determine whether certain transactions in title 11 or similar cases qualify under section 382(1)(5). The rules are necessary to limit relief under section 382(1)(5) to ownership changes in which pre-change shareholders and qualified creditors maintain a substantial continuing interest in the loss corporation following the title 11 or similar case.

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

The reporting requirements are to be performed by the loss corporation. Section 1.382-3-(o)(2) requires the loss corporation to make an election to apply the rule suspending the application of the deemed exercise rule of Section 1.382-2T(h)(4) (i) for certain options to testing dates before September 5, 1990, and an election to not apply the same rule to testing dates on or after September 5, 1990, to April 8, 1992. This information is required by the Service to assure that the proper amount of carryover attributes are used by a loss corporation following those types of ownership changes.

### **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 SMALL BUSINESSES OR OTHER SMALL 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 September 6, 1990 (55 FR 36657). See also 1990-41 I.R.B. 23 (October 9, 1990). Written comments were received, but no public hearing was held as none was requested. Final regulations were published in the Federal Register on April 9, 1992 (57 FR 12208).

We received no comments during the comment period in response to the Federal Register notice dated June 2, 2009 (74 FR 26478).

**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 U.S.C. 6103.

**11. JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

**12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

Burden Estimation:

Section 1.382-3(o)(2) requires the loss corporation to make an election to apply the rule suspending the application of the deemed exercise rule of Section 1.382-2T(h)(4)(i) for certain options to testing dates before September 5, 1990, and an election to not apply the same rule to testing dates on or after September 5, 1990, to April 8, 1992. The election must be filed with an income tax return of the loss corporation not later than the due date (including extensions) for filing the income tax return of the loss corporation for the taxable year including or ending with April 8, 1992. It is estimated that 10 respondents will make 1 response each, which is estimated to take 2 minutes to 1 hour, depending on individual

circumstance, with an estimated average of 5 minutes to prepare, for a total estimated reporting burden of less than one hour.

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

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

As suggested by OMB, our Federal Register notice dated June 2, 2009 (74 FR 26478), 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 responses from taxpayers on this subject. As a result, estimates of these cost burdens are not available at this time.

### **14. ESTIMATED ANNUALIZED 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 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. EXCEPTION 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 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.

## **OMB EXPIRATION DATE**

We believe the public interest will be better served by not printing an expiration date on the form(s) in this package.

Printing the expiration date on the form will result in increased costs because of the need to replace inventories that become obsolete by passage of the expiration date each time OMB approval is renewed. Without printing the expiration date, supplies of the form could continue to be used.

The time period during which the current edition of the form(s) in this package will continue to be usable cannot be predicted. It could easily span several cycles of review and OMB clearance renewal. In addition, usage fluctuates unpredictably. This makes it necessary to maintain a substantial inventory of forms in the supply line at all times. This includes supplies owned by both the Government and the public. Reprinting of the form cannot be reliably scheduled to coincide with an OMB approval expiration date. This form may be privately printed by users at their own expense. Some businesses print complex and expensive marginally punched continuous versions, their expense, for use in their computers. The form may be printed by commercial printers and stocked for sale. In such cases, printing the expiration date on the form could result in extra costs to the users.

Not printing the expiration date on the form(s) will also avoid confusion among taxpayers who may have identical forms with different expiration dates in their possession.

For the above reasons we request authorization to omit printing the expiration date on the form(s) in this package.