

SUPPORTING STATEMENT

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 702 of the Family Support Act of 1988 (the "FSA"), P.L. 100-485 (signed into law on October 13, 1988), amended section 62 of the Code for taxable years beginning after December 31, 1988. New subsection 62(c) provides that so-called "nonaccountable" arrangements will not be treated as reimbursement or expense allowance arrangements for purposes of section 62(a)(2)(A).

Congress described nonaccountable plans as arrangements under which (1) the employee is not required to substantiate the expenses covered by the arrangement to the person providing the reimbursement, or (2) the employee has the right to retain amounts in excess of the substantiated expenses covered under the arrangement. As a result of the FSA amendments, amounts received under "nonaccountable" arrangements are includible in income and expenses incurred under such arrangements are no longer deductible "above-the-line" under section 62. Instead, the expenses are deductible by the employee only as a miscellaneous itemized deduction, subject to the two percent floor imposed on such deductions by section 67.

The Conference Report indicates that as a result of this change, employers are required to withhold on and report all reimbursements and advances as additional compensation/wages, unless the amounts are paid under an arrangement that complies with section 62(c). Generally, at the time of the FSA amendments, these employers were already withholding employment taxes and completing Forms W-2 for all of these employees. The provisions of section 62(c) generally did not require any new reporting, but did require some changes in the amounts reported and the method for completing the forms they were already accustomed to submitting.

2. USE OF DATA

The information collected will be used to enforce the provisions of section 62(c).

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

We have no plans to offer electronic filing. IRS publication, 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**

We have been unable to reduce the burden for small businesses.

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**

On December 12, 1989, a notice of proposed rulemaking (54 FR 51038) was published simultaneously with temporary regulations (54 FR 51021) in the **Federal Register**. Comments were received during the 60-day period prescribed in the notice. The proposed regulations were finalized as revised in T.D. 8324 (55 FR 51689) which was published in the **Federal Register** on December 17, 1990.

In response to the **Federal Register Notice dated July 13, 2010 (75 FR 40029)**, we received no comments during the Comment period regarding EE-113-90.

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**

Employees: The statute and the final regulations provide that a reimbursement or expense allowance arrangement is not an accountable arrangement if it does not require employees to substantiate the expenses covered by the arrangement to their employers. Under prior law, employees were required to substantiate to the Service in the case of any employee business expense deductions claimed on their own return, but section 62 did not expressly require employees to substantiate such expenses to their employers in a reimbursement or expenses allowance situation.

Employers/W-2 Reporting: Section 1.6041-3 of the regulations provides a list of payments for which no return of information is required under section 6041. Prior law required no return of information to the extent the employee was required to "account" to his employer and did so account for such expenses. The final regulations amend that section of the regulations to clarify that W-2 reporting is required unless the new requirements of section 62(c) are met. Thus, some (undetermined) number of employers who fail to comply with section 62(c) will be required to report such amounts on the employee's Form W-2 and they may not have been doing so in prior years (though they would, of course, have been completing a W-2 for the employee). The burden for this requirement is reflected in the burden of Form W-2.

Employers/Employment Tax Withholding: Under prior law certain traveling and other expenses were not "wages" for employment tax withholding (income tax withholding, FICA, FUTA and RRTA) purposes. The prior regulations included a "reasonable expectation" requirement. Thus, the amount was

wages unless the amount was paid for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer. The new standard under section 62(c) is more strict than this old reasonable expectation standard. Therefore, for example, advances for travel and other business expenses will now be treated as wages subject to employment tax withholding if they fail to meet the section 62(c) requirements, whereas, they may have avoided withholding in the past under the less stringent "reasonable expectation" standard. As in the W-2 situation, the employer is already withholding employment taxes on the regular wages of the employee and this change only requires an adjustment in the amount of wages subject to withholding in those cases where the section 62(c) requirements are not met.

We estimate that 1,419,456 employees will be subject to these substantiation requirements and that it will take each employee 1/2 hour to complete the substantiation requirement. **The total burden is 709,728 hours.**

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

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

As suggested by OMB, our **Federal Register** notice [75 FR 40029] dated July 13, 2010, 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 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. **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 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.