

SUPPORTING STATEMENT
REG-142561-07
OMB No. 1545-1699

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The rulemaking proposes to amendments to 26 CFR part 1 under section 1502 of the Internal Revenue Code (Code). Section 1.1502-77 provides the existing regulations concerning the agent for a group and the designation of a new agent to act for the group.

Section 1.1502-77 was announced in 2002 in TD 9002 (June 28, 2002) (67 FR 43538), and supplemented by TD 9255 (71 FR 13001) (March 14, 2006) and TD 9343 (72 FR 40066) (July 23, 2007) (each providing authority to replace the common parent as agent where the parent is a foreign entity). Subsequent to 2002, the IRS and Treasury Department issued other regulations, §§ 1.856-9, 1.1361-4(a)(6), and 301.7701-2(c)(2) (iii), which provide that an entity treated as disregarded from its owner for Federal income tax purposes is not disregarded for purposes of its tax liability for periods during which it was not disregarded. These proposed regulations conform to the subsequent guidance by permitting a non-corporate entity to be agent for the group.

2. USE OF DATA

These proposed regulations provide greater certainty as to which entity will be the substitute agent for the group by identifying a default successor agent for the group. Under the proposed regulations, an entity (whether foreign or domestic) is a default successor if it becomes the single entity primarily liable, pursuant to applicable law (including, for example, by operation of a state or Federal merger statute), for the tax liability of the former agent of the group upon the termination of the agent's existence. When the agent for the group terminates under applicable law and there is no default successor, the agent for the group may designate a substitute agent.

The proposed regulations provide that:

- an entity that is the agent for the group, upon becoming the default successor, is required to notify the Commissioner in writing, that it is the default successor.
- the agent for the group designates an agent for the group under circumstances in which the agent for the group's existence terminates without a default successor, the agent for the group must notify the Commissioner in writing of the designation and provide an agreement executed by the designated entity acknowledging that it will serve as the agent for the group.
- if the designated entity was not itself a member of the group during the consolidated return year because the designated entity is a successor of a member of the group for the consolidated return year, the agent for the group must furnish a statement by the

designated entity acknowledging that it is or will be primarily liable for the tax as a successor of a member.

- a designated substitute agent to give notice to each member of the group when the Commissioner has designated a substitute agent for the group.
- an entity ceases to be a member of a group, such entity may file a written notice of that fact with the Commissioner and request a copy of the notice of deficiency with respect to the Federal income tax for a consolidated return year during which the entity was a member, or a copy of any notice and demand for payment of such deficiency, or both.

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 May 30, 2012, at 77 FR 31786, soliciting comments on the rule and associated information collection. A public hearing may be scheduled if requested.

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

The collections of information in the proposed regulations are in § 1.1502-77(c)(3), (c)(4), (c)(5), and (f)(3).

§1.1502-77(c)(3)

The proposed regulations provide that an entity that is the agent for the group, upon becoming the default successor, is required to notify the Commissioner in writing that it is the default successor.

§1.1502-77(c)(4)

The proposed regulations further provide that, when the agent for the group designates an agent for the group under circumstances in which the agent for the group's existence terminates without a default successor, the agent for the group must notify the Commissioner in writing of the designation and provide an agreement executed by the designated entity acknowledging that it will serve as the agent for the group. If the designated entity was not itself a member of the group during the consolidated return year because the designated entity is a successor of a member of the group for the consolidated return year, the agent for the group must furnish a statement by the designated entity acknowledging that it is or will be primarily liable for the tax as a successor of a member.

§1.1502-77(c)(5)

The proposed regulations require a designated substitute agent to give notice to each member of the group when the Commissioner has designated a substitute agent for the group.

§1.1502-77(f)(3)

If an entity ceases to be a member of a group, such entity may file a written notice of that fact with the Commissioner and request a copy of the notice of deficiency with respect to the Federal income tax for a consolidated return year during which the entity was a member, or a copy of any notice and demand for payment of such deficiency, or both.

# Respondents	# Responses Per	Annual	Hours Per	Total Burden
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	Respondent	Responses	Response	
100	1	100	2	200

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

The notice of proposed rulemaking has 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. Any comments received associated with this cost burden will be summarized in final rulemaking.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

Under the existing regulations, a common parent that is going out of existence may designate its successor. The proposed regulations provide that the terminating agent's default successor automatically become the agent for group.

The burden which was previously approved under the current rulemaking reside under §1.1502.77(d), which provided for common parent or a previously designated agent of a consolidated group notify the Commissioner in writing that it anticipates going out of existence and that it designates another corporation to serve as the group's agent. The notification would include a statement by the designated corporation agreeing to serve as the group's agent and if the designated corporation was not itself a member of the group, a statement it is or will be liable for the tax; an agent designated by the Commissioner is required to give notice to each corporation (or any successor) that was a member of the group during any part of the relevant consolidated return year.

The proposed regulations generally retain the rules, concepts and examples from the existing regulations regarding the agent for a consolidated group. However, the rules, concepts and examples from the existing regulations have been renumbered, restructured and revised to provide greater clarity.

There is no change to the currently approved burden and is being submitted and associated with this notice of proposed rulemaking.

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 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.