

SUPPORTING STATEMENT  
1545-0771  
TD 8864(Final)  
(EE-63-88; IA-140-86; REG-209785-95)

CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

EE-63-88 (previously LR-216-84)

Section 61 clarifies that fringe benefits are included in gross income unless specifically excluded by another provision of the Code. Section 132 provides exclusions from gross income for the value of certain fringe benefits.

The collection of information requirements are listed below for EE-63-88.

(a) Written policy statement (§1.61-21)

Section 61 provides a safe harbor rule under which the commuting-only use of an employer-provided vehicle may be valued at \$1.50 per one-way commute. As provided in the Conference Report to Public Law 99-44, one of the requirements of this valuation rule is that the employer has a written policy statement that prohibits any personal use of the vehicle other than commuting and *de minimis* personal use. The written policy statement is needed to substantiate the employer's policy for the personal use of vehicles.

(b) Written reciprocal agreements (§1.132-2(b)(1))

Section 132(g)(2) provides an exclusion for no-additional-cost service fringe benefits provided pursuant to a written reciprocal agreement between employers. The regulations adopt this requirement. The written statement is needed to substantiate the agreement between employers.

(c) Product testing reports (§1.132-5(n)(1)(vi))

Based on the House Committee Report that accompanied section 531 of the Tax Reform Act of 1984, the regulations provide that the value of consumer goods provided under a product testing program may be excluded from income if certain requirements are met. One of the requirements is that the employee submit detailed reports to the employer of the testing and evaluation of the product being tested. This reporting will enable the Service to determine the existence of a product testing program.

The regulations also provide (§1.132-5(n)4)) that if the employer does not, within a reasonable period of time after expiration of the testing period, tabulate and evaluate the reports submitted by the employee, the program will not be deemed

to be a product testing program. This requirement is necessary to substantiate the existence of a product testing program.

(d) Substantiation requirements (§1.132-5(c)(1)(ii))

According to the section 132 regulations provided in LR-117-85 (published as questions and answers in the **Federal Register** for November 6, 1985), the section 274(d) requirements, if applicable, must be satisfied to substantiate the business use of employer-provided listed property, such as an automobile. These regulations contain the same rules but are not drafted in question and answer form.

(e) Security study (§1.132-5(m)(2)(iv)(A))

The regulations provide that the value of employer-provided transportation may be excluded from gross income if an overall security program. (i.e.. 24-hour protection) is established. However, if an employer has an independent security program performed with respect to its employees and applies the security recommendations on a consistent basis, an overall security program is not required.

(f) Notification to employees (§1.61-21)

The regulations provide that an employer must notify its employees by a certain date that the employer has elected to use a special valuation rule to value a particular fringe benefit.

The notification must be in writing and must alert the employees of the applicable section 274(d) substantiation requirements and of the effect of a failure to comply with such requirements. The notification must be provided in a manner reasonably expected to come to the attention of all affected employees.

(g) Notification to employers (§1.61-21)

If an employer fails to notify an affected employee by the required date, the employer may still use a special valuation for that employee if the employer receives a statement from the employee that provides that the employee knows of the employer's use of a special valuation rule, the applicable substantiation requirements, and the effect of a failure to comply with such requirements.

IA-140-86 (previously LR-117-85)

The substantiation requirements for travel, entertainment, and gift expenses are set forth in Code section 274(d). A taxpayer is required to substantiate such expenses by adequate records or sufficient evidence coordinating his own statements as to (1) amount, (2) time and place, (3) business purpose, and (4) business relationship. The detailed substantiation requirements are set forth in

section 1.274-5 of the regulations.

The substantiation and reporting requirements affect (1) employees, (2) employers and (3) self-employed persons or independent contractors.

Employees who are not reimbursed for their travel, entertainment or gift expenses may deduct them by reporting them on Form 1040 and Form 2106. Reg. 1.274-5 details the records and supporting evidence that must be maintained to substantiate the deduction. The recordkeeping burden is in addition to the reporting burden already imposed by the forms.

Employees who are reimbursed by their employer must provide the same detailed substantiation of their expenses to their employer. This reporting burden is in addition to that already imposed by existing forms. If there has been a partial reimbursement, the employee may claim a deduction on his own return for the excess but must then maintain the detailed records required by Reg. 1.274-5.

Employers generally deduct expenses for business, travel, entertainment, and gifts, including the amounts reimbursed employees, on Form 1120 or Form 1065. Reg. 1.274-5 requires employers to keep detailed records to substantiate their deductions including any supporting documents submitted by reimbursed employees. This recordkeeping burden is in addition to the burden imposed by existing forms.

Self-employed persons generally deduct these expenses on Schedule C (Form 1040). If the expense is incurred on behalf of a client, the expenses must be reported to the client in detail. See Reg. 1.274-5. Although the expense would not be deductible if reimbursed, detailed records must be maintained because the individual may still be called upon to prove the reimbursed expenses. This recordkeeping and reporting burden is in addition to that imposed by existing forms. The client or customer who reimburses the independent contractor must maintain the records supplied by the contractor to prove his expenses as well. In the event such expenses are not reimbursed, the independent contractor must maintain the detailed records required in section 1.274-5 to support his deduction.

#### REG-209785-95

This regulation provides that taxpayers who deduct, or reimburse employees for, business expenses for travel, entertainment, gifts, or listed property are required to maintain certain records, including receipts, for expenses of \$75 or more. Section 1.274-5(c)(2)(iii)(B) of the regulation raised the previous receipt threshold from \$25 to \$75, thus reducing the burden on taxpayers.

#### USE OF DATA

The IRS requires this information to ensure compliance with §§61,132, and 274(d) of the Code and to ensure the correct payment of any tax due.

. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

There is no requirement that the records be in paper form. *Rev. Proc. 91-59 (1991-2 C.B. 841)*, provides procedures for maintaining tax records in electronic form.

. EFFORTS TO IDENTIFY DUPLICATION

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

. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

We have attempted to minimize burden on small businesses.

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

This regulation provides guidance relating to the requirement that any deduction or credit with respect to business travel, entertainment, and gift expenses be substantiated with adequate records in accordance with Code section 274(d). A less frequent collection would deprive the employee of the proper documentary evidence to substantiate deductions or credits taken.

. 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.

. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

IA-140-86 (LR-117-85) (TD 8061) was published in the **Federal Register** as a temporary regulation on November 6, 1985 (50 FR 46006).

EE-63-88 (LR-216-84) (TD 8256) was published in the **Federal Register** as a final and temporary regulation on July 6, 1989 (54 FR 28576).

REG-209785-95 was published in the **Federal Register** as a notice of proposed rulemaking (62 FR 14051) simultaneously with the temporary regulations TD 8715 (62 FR 13988) on March 25, 1997.

The final regulation TD 8864 (65 FR 4121) was published in the **Federal Register** on January 26, 2000.

We received no comments during the comment period in response to the **Federal Register** notice (80 FR 53922), dated September 8, 2015.

EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payments or gifts are being provided.

ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

JUSTIFICATION OF SENSITIVE QUESTIONS

No personally identifiable information (PII) is being collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Reporting Regulations:

| <u>Reg. sec.</u> | <u>Number of respondents</u> | <u>Total responses</u> | <u>Time per response</u> | <u>Burden (hours)</u> |
|------------------|------------------------------|------------------------|--------------------------|-----------------------|
| 1.61-21          | 155,150                      | 37,580,150             | .0104493                 | 392,688               |
| 1.132-5          | 27,000                       | 225,000                | 2.71111                  | 610,000               |
| 1.274-5          | <u>7,100,000</u>             | <u>7,100,000</u>       | 1.3                      | <u>9,230,000</u>      |
|                  | 7,282,150                    | 44,905,150             |                          | 10,232,688            |

Recordkeeping Regulations:

|            |                   |  |        |                   |
|------------|-------------------|--|--------|-------------------|
| 1.274-5(c) | <u>21,300,150</u> |  | 1.3    | <u>27,690,000</u> |
|            | 28,582,150        |  | Total: | 37,922,688        |

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our **Federal Register** notice dated September 8, 2015, 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

There is no estimated annualized cost to the Federal government.

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

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

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

There are no exceptions to the certification statement.

**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.