

Supporting Statement
Internal Revenue Service
TD 9422
S Corporations Guidance Under American Jobs Creation Act of 2004
OMB No. 1545-2114

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

This document contains final regulations that provide guidance regarding certain changes made to the rules governing S corporations under the American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005. The final regulations replace obsolete references in the current regulations and allow taxpayers to make proper use of the provisions that made changes to prior law. The final regulations include guidance on the S corporation family shareholder rules, the definitions of “powers of appointment” and “potential current beneficiaries” (PCBs) with regard to electing small business trusts (ESBTs), the allowance of suspended losses to the spouse or former spouse of an S corporation shareholder, and relief for inadvertently terminated or invalid qualified subchapter S subsidiary (QSub) elections. The final regulations affect S corporations and their shareholders. The collection of information is required by §1.1361(m)(2)(ii)(A). § 1.1361-1(m)(2)(ii) states the election statement must include:

- A) The name, address, and taxpayer identification number of the trust, the potential current beneficiaries, and the S corporations in which the trust currently holds stock. If the trust includes a power described in paragraph (m)(4)(vi)(B) of this section, then the election statement must include a statement that such a power is included in the instrument, but does not need to include the name, address, or taxpayer identification number of any particular charity or any other information regarding the power.
- (B) An identification of the election as an ESBT election made under section 1361(e)(3);
- (C) The first date on which the trust owned stock in each S corporation;
- (D) The date on which the election is to become effective (not earlier than 15 days and two months before the date on which the election is filed); and
- (E) Representations signed by the trustee stating that—
 - (1) The trust meets the definitional requirements of section 1361(e)(1); and
 - (2) All potential current beneficiaries of the trust meet the shareholder requirements of section 1361(b)(1).”

The information must be reported by the trustees of trust electing to be ESBTs, and must be filed with the service center where the S corporation files its income tax return

2. USE OF DATA

This information will be used by the IRS to determine the number of shareholders of the corporation in which the trust holds stock and whether the corporation is an eligible S corporation. The information is required so that the IRS can determine the proper number of PCBs who will be deemed to be shareholders of the corporation as of the ESBT election

for purposes of the section 1361(b)(1)(A) limit. This will allow the IRS to determine whether the trust is eligible to be an ESBT and whether the corporation is eligible to be an S corporation. The information already required by the current regulation is used to determine both the number of deemed shareholders of the corporation and whether those shareholders are eligible to hold S corporation stock. The information must be reported by the trustees of trust electing to be ESBTs.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

There are no plans to provide electronic filing for TD 9422 because electronic filing is not appropriate for the collection of information in this submission.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaption from another source.

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

We have attempted to minimize the burden on small businesses or other small entities wherever possible. The information collection burden imposed on the electing small business trusts is minimal. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

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

The information required is needed to verify compliance with Section 1.1361-1(m)(2)(ii) of the Internal Revenue Code. Less frequent collection of taxes and tax information, could adversely affect the governments effectiveness and would reduce the oversight of the public in ensuring compliance with Internal Revenue Service Code not allowing the IRS to meet its mission.

7. 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 with Guidelines in 5 CFR 1320.5(d)(2).

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

On September 28, 2007, a notice of proposed rulemaking and a notice of public hearing (REG-143326-05) were published in the *Federal Register* (72 FR 55132). No one requested to speak at the public hearing. Accordingly, the public hearing scheduled for January 16, 2008, was cancelled in a notice published in the *Federal Register* (73 FR 1131) on January 7, 2008. No one submitted written or electronic comments, which were due by December 27, 2007. Thus, the proposed regulations were adopted by Treasury Decision 9422, published in the *Federal Register* (73 FR 47526) on August 14, 2008.

In response to the *Federal Register* Notice dated January 25, 2017 (8s FR 8487), we received no comments during the comment period regarding TD 9422.

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

No payment or gift has been provided to any respondents.

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

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the “Business Master File (BMF)” system, and a Privacy Act System of Records notice (SORN) has been issued for this system under Treasury/IRS 24.030, CADE Individual Master File (IMF), Treasury/IRS 24.046 Business Master File (BMF), Treasury/IRS 34.047 IRS Audit Trail & Security Records System SORNs.

The Internal Revenue Service PIAs can be found at:

<https://www.irs.gov/uac/Privacy-Impact-Assessments-PIA>

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

We estimate that there are 26,000 trusts per year that will make the ESBT election that include charitable distribution powers described in the proposed regulation. We estimate that it will take an average of 1 hour for each, for a total annual burden estimated of 26,000 hours.

Code Section	Description	# Respondents	# Responses Per Respondent	# Annual Responses	Hours Per Response	Total Burden
1.1361-1(m)	TD 9422 – S Corporations Guidance	26,000	1	26,000	1	26,000

(2)(ii)	Under AJCA of 2004					
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13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There is no annual start-up costs associated with this collection.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no annualized cost to the federal government.

15. REASONS FOR CHANGE IN BURDEN

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

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis, and 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 regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of 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.