

SUPPORTING STATEMENT

Internal Revenue Service

OMB Control Number 1545-1623

REG-246256-96 (Final-T.D. 8978)

Excise Taxes on Excess Benefit Transactions

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

A collection of information is necessary for any organizations that avail themselves of the rebuttable presumption of reasonableness described in the regulations (26 C.F.R. Section 53.4958-6(a)(2), 53.4958-6(a)(3), 53.4958-6(d)(2), and 53.4958-6(d)(3)). The rebuttable presumption is being considered because the legislative history of section 4958 (H. REP. 104-506 at 56-7, March 28, 1996) stated that parties to a transaction should be entitled to rely on such a rebuttable presumption of reasonableness with respect to a compensation arrangement or a property transaction between certain organizations and disqualified persons of the organizations. The legislative history further instructed the Secretary of the Treasury and the IRS to issue guidance in connection with the reasonableness standard that incorporates this presumption.

2. USE OF DATA

The rule affects organizations described in Internal Revenue Code sections 501(c)(3) and (4) (applicable tax-exempt organizations). The collection of information entails obtaining and relying on appropriate comparability data and documenting the basis of an organization's determination that compensation is reasonable, or a property transfer (or transfer of the right to use property) is at fair market value. These actions comprise two of the requirements specified in the legislative history for obtaining the rebuttable presumption of reasonableness. Once an applicable tax-exempt organization satisfies the requirements of the presumption, section 4958 excise taxes can only be imposed if the IRS develops sufficient contrary evidence to rebut the probative value of the evidence put forth by the parties to the transaction.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

We have no plans to offer electronic filing because this is a record keeping requirement. 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

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

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

A less burdensome alternative for small organizations would be to exempt those entities from the requirements for establishing the rebuttable presumption of reasonableness. However, it is not feasible to allow organizations to rely on this extremely favorable presumption without satisfying some conditions. Satisfaction of the requirements as outlined in the legislative history leads to a benefit, but failure to satisfy them does not necessarily lead to a penalty. A more burdensome requirement would be to require all applicable tax-exempt organizations under Code section 4958 to satisfy the three requirements of the rebuttable presumption of reasonableness under all circumstances. The rule currently contains a less burdensome safe harbor for one of the requirements (obtaining comparability data on compensation) for organizations with annual gross receipts of less than \$1 million.

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

It would be hard to obtain and rely on appropriate comparability data and document the basis of an organization's determination that compensation is reasonable, or a property transfer (or transfer of the right to use property) is at fair market value if there was a less frequent collection of information.

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

A notice of proposed rulemaking (REG-246256-96,1998-2 C.B.224) was published in the Federal Register on August 4, 1998 (63-FR 41486). A public hearing was held on March 16 and 17, 1999. The notice of proposed rulemaking was revised, and replaced by temporary regulations (T.D.8920,2001-8 I.R.B.654[66 FR 2144]) and a cross-referencing notice of proposed rulemaking (REG-246256-96,2001-8 I.R.B.713[66 FR 2173]). They were published in the Federal Register on January 10, 2001. The final regulations were published in the Federal Register on January 23, 2002 (67 FR 3083).

We received no comments during the comment period in response to the *Federal Register* notice (82 FR 8653), dated January 27, 2017, regarding T.D. 8978.

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 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No personally identifiable information (PII) is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The collections of information in this regulation are in 26 CFR Section 53.4958-6(a)(2), 53.4958-6(a)(3), 53.4958-6(d)(2), and 53.4958-6(d)(3). The collection of information entails obtaining and relying on appropriate comparability data and documenting the basis of an organization's determination that compensation is reasonable, or a property transfer (or transfer of the right to use property) is at fair market value. The estimated total annual recordkeeping burden is 910,083 hours. The estimated annual burden per recordkeeping varies from 3 hours to 308 hours, depending on individual circumstances, with an estimated weighted average of 6 hours, 3 minutes. The estimated number of record keepers is 150,427.

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
Regulation 246256-96 Final TD 8978	Excise Taxes on Excess Benefit Transactions	150,427	1	150427	6.05	910,083
Totals		150,427				910,083

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no capital/start-up or ongoing operation/maintenance cost associated with this information collection.

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 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 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.