

SUPPORTING STATEMENT
Source of Income from Certain Space and Ocean Activities;
Source of Communications Income
(TD 9305 – final)
1545-1718

CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Congress enacted section 863(d) and (e) as part of the Tax Reform Act of 1986, Pub. L. No. 99–514, 100 Stat. 2085. Section 863(d) governs the source of income derived from space or ocean activities. Section 863(e) governs the source of income derived from international communications activities.

TD 9305 contains final regulations under section 863(d) governing the source of income from certain space and ocean activities. The final regulations primarily affect persons who derive income from activities conducted in space, or on or under water not within the jurisdiction of a foreign country, possession of the United States, or the United States (in international water). The final regulations also affect persons who derive income from transmission of communications.

2 USE OF DATA

This information is required by the IRS to monitor compliance with the Federal tax rules for determining the source of income from space or ocean activities, or from transmission of communications.

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. 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

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment pursuant to that Order is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the rules provided in these regulations principally affect large multinational corporations that pay foreign taxes on income derived from substantial foreign operations and that use these and any other applicable source rules in determining their foreign tax credit. Accordingly, a Regulatory Flexibility Act assessment is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the NPRM preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

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

The consequences for not collecting this information are that the taxpayers will not be able to clearly determine or derive income from activities conducted in space, or on or under water not within the jurisdiction of a foreign country, possession of the United States, or the United States (in international water).

This affects taxpayer confidence and compromises the Agency's ability to enforce tax compliance effort to the public. Tax compliance is a vital part of the government's ability to meet its' mission and serve the public.

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

The Treasury Department and the IRS published a notice of proposed rulemaking (REG-106030-98) in the Federal Register on January 17, 2001 (66 FR 3903), which provided proposed regulations under section 863(a), (b), (d), and (e) (the 2001 proposed regulations). The Treasury Department and the IRS received numerous written comments on the 2001 proposed regulations and held a public hearing on May 23, 2001.

In light of the extensive written comments, industry evolution, and AJCA changes, the Treasury Department and the IRS felt that it was appropriate to propose these regulations to reflect these changes and to provide another opportunity for comment.

Consequently, the Treasury Department and the IRS published another notice of proposed rulemaking in the Federal Register on September 19, 2005 (70 FR 54859),

which withdrew the 2001 proposed regulations and provided new proposed regulations under section 863(a), (b), (d), and (e) (the proposed regulations).

A public hearing on the proposed regulations was scheduled for December 15, 2005 but was ultimately cancelled because no one requested to speak. A few written comments, however, were received. These comments uniformly praised the proposed regulations as an improvement over the 2001 proposed regulations and generally were supportive of much of the proposed regulations. However, commentators suggested a few additional changes. After consideration of these comments, the proposed regulations were adopted as final regulations, as amended in the Treasury decision 9305. Final regulations (TD 9305) were published in the Federal register on December 27, 2006 (71 FR77594).

In response to the Federal Register notice (84 FR 26180), dated June 5, 2019, we received no comments during the comment period regarding this guidance.

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

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:

Treas/IRS 24.046 BMF

Treas/IRS 34.047 Audit trail and security records system

The Internal Revenue Service PIA’s can be found at <http://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

The collections of information in these final regulations are in §§ 1.863–8(g) and 1.863–

9(k). This information is required by the IRS to monitor compliance with the Federal tax rules for determining the source of income from space or ocean activities, or from transmission of communications.

§1.863-8 -- Source of income derived from space and ocean activity under section 863(d).

Income of a United States or a foreign person derived from space and ocean activity (space and ocean income) is sourced under the rules of this section, notwithstanding any other provision, including sections 861, 862, 863, and 865. Section 1.863-8(g) provides that a taxpayer making an allocation of gross income under this section must prepare and maintain documentation in existence when its return is filed regarding the allocation of gross income and allocation and apportionment of expenses, losses, and other deductions, the methodologies used, and the circumstances justifying use of those methodologies. The taxpayer must produce such documentation within 30 days of a request.

We estimate that 50 taxpayers will take from 3 to 7 hours to comply with this requirement, with an estimated average of 5 hours per taxpayer. The total burden for this requirement is estimated to be 250 hours.

§1.863-9 -- Source of income derived from communications activity under section 863(a), (d), and (e).

Income of a United States or a foreign person derived from each type of communications activity, as defined in paragraph (h)(3) of this section, is sourced under the rules of this section, notwithstanding any other provision including sections 861, 862, 863, and 865. Section 1.863-9(k) provides that a taxpayer making an allocation of gross income under this section must prepare and maintain documentation in existence when its return is filed regarding the allocation of gross income and allocation and apportionment of expenses, losses, and other deductions, the methodologies used, and the circumstances justifying use of those methodologies. The taxpayer must produce such documentation within 30 days of a request.

Including the taxpayers that comply with 1.863-8*, we estimate that 250 taxpayers will take from 3 to 7 hours to comply with this requirement, with an estimated average of 5 hours per taxpayer. The total burden for this requirement is estimated to be 1,250 hours.

The burden estimate is as follows:

OMB Collection	Authority	Form	Annual Responses	Hours per Response	Total Burden
IRS 1545-1718	CFR 1.863-8	---	50	5	250
1545-1718	1.863-9	---	250*	5	1,250
	IRS TOTAL		250		1,500

Please continue to assign OMB number 1545-1718 to these regulations.

1.863-8

1.863-9

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated June 5, 2019, 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 responses from taxpayers on this subject. As a result, estimates of these cost burdens are not available currently.

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

After consultation with various functions within the Service, we have determined that the cost of developing, printing, processing, distribution and overhead for this regulation is nominal.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden. However, a correction to what was previously reported will result in an increase of 250 total hours, in the ROCIS system.

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.