

SUPPORTING STATEMENT
Internal Revenue Service
Regulations Providing Guidance Under Section 1446(f)
OMB # 1545-XXXX

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 1446(f), which was added to the Internal Revenue Code (the “Code”) by section 13501 of the Tax Cuts and Jobs Act, Public Law 115–97 (2017) (the “Act”), provides rules for withholding on the transfer of a partnership interest described in section 864(c)(8). Nonresident aliens and foreign corporations are taxable in the United States on taxable income which is effectively connected with the conduct of a trade or business within the United States.

This document contains proposed regulations implementing certain sections of the Internal Revenue Code, including sections added to the Internal Revenue Code by the Tax Cuts and Jobs Act, that relate to the withholding of tax and information reporting with respect to certain dispositions of interests in partnerships engaged in the conduct of a trade or business within the United States.

2. USE OF DATA

The proposed regulations provide rules for withholding, reporting, and paying tax under section 1446(f) upon the sale, exchange, or other disposition of an interest in a partnership described in section 864(c)(8) and proposed section 1.864(c)(8)–1.1 The proposed regulations would, when finalized, adopt many of the rules that were described in Notice 2018–29, with certain modifications provided, in part, in response to comments. In addition, the proposed regulations provide reporting rules relating to section 864(c)(8) and rules implementing withholding under section 1446(f)(4).

They also contain rules clarifying the reporting rules applicable to transfers of partnership interests subject to section 6050K. Further, the proposed regulations provide rules implementing withholding by brokers on transfers of certain interests in publicly traded partnerships subject to section 1446(f)(1) and make related changes to the reporting rules and procedures for adjusting withholding under sections 1461, 1463, and 1464.

They also make changes to the rules regarding withholding on distributions by publicly traded partnerships under section 1.1446–4, including the rules that apply to qualified notices and nominees. Finally, the proposed regulations provide rules coordinating withholding under section 1446(f) with other withholding regimes to prevent over withholding of tax.

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

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

This notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). The proposed regulations affect (i) foreign persons that recognize gain or loss from the sale or exchange of an interest in a partnership that is engaged in the conduct of a trade or business within the United States, and who are not subject to the Regulatory Flexibility Act, (ii) U.S. persons that are transferors providing Forms W-9 to transferees to certify that they are not foreign persons, (iii) persons who acquire those interests, (iv) partnerships that, directly or indirectly, have foreign persons as partners, and (v) brokers that effect transfers of interests in publicly traded partnerships.

The Treasury Department and the IRS do not have data readily available to assess the number of small entities potentially affected by the proposed regulations. However, entities potentially affected by these proposed regulations are generally not small entities, because of the resources and investment necessary to acquire a partnership interest from a foreign person or to directly, or indirectly, have foreign persons as partners. Therefore, the Treasury Department and the IRS do not believe that a substantial number of domestic small entities will be subject to the proposed regulation's information collections. Consequently, the Treasury Department and the IRS certify that the proposed regulations will not have a significant economic impact on a substantial number of small entities. The IRS invites the public to comment on the impact of these regulations on small entities.

Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

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

A less frequent collection of the information will prevent the IRS from being able to determine the taxpayer's compliance and/or reporting with the requirements outlined in section 1446(f) of the Code thereby engendering the inability of 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 December 29, 2017, the Department of the Treasury (the "Treasury Department") and the Internal Revenue Service (the "IRS") released Notice 2018-08, 2018-7 I.R.B. 352, which temporarily suspends the requirement to withhold on amounts realized in connection with the sale, exchange, or disposition of certain interests in a publicly traded partnership not treated as a corporation under section 7704 and the regulations thereunder.

On April 2, 2018, the Treasury Department and the IRS released Notice 2018-29, 2018-16 I.R.B. 495, which provides temporary guidance and announces an intent to issue proposed regulations under section 1446(f) with respect to the sale, exchange, or disposition of certain interests in non-publicly traded partnerships.

On December 27, 2018, the Treasury Department and the IRS published in the Federal Register a notice of proposed rulemaking at 83 FR 66647 (REG-113604-18) under section 864(c)(8) (the "proposed section 864(c)(8) regulations").

Each of these documents solicited public comments and provided for requests for public hearing. The proposed regulations would, when finalized, adopt many of the rules that were described in Notice 2018-29, with certain modifications provided, in part, in response to comments.

The proposed regulations (REG-105476-18), released May 13, 2019 (84 FR 21198), provided for written or electronic comments. Any comments and requests for a public hearing had to be received by July 12, 2019. A summary of

these comments or requests will be included with the release of any final regulations.

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

For the affiliated forms, a privacy impact assessment (PIA) has been conducted for information collected under this request as part of the “Business Master file (BMF)” and a Privacy Act System of Records notice (SORN) has been issued for these systems under IRS 22.062 – Electronic Filing Records; IRS 24.030 – Customer Account Data Engine (CADE) Individual Master File; IRS 24.046 - CADE Business Master File (BMF); IRS 34.037 - IRS 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 collection of information in these proposed regulations is in proposed section 1.864(c)(8)–2 regarding reporting for transactions described in section 864(c)(8) and proposed section 1.864(c)(8)–1, and proposed sections 1.1446(f)–1, 1.1446(f)–2, 1.1446(f)–3, and 1.1446(f)–4 regarding the withholding, reporting, and paying of tax under section 1446(f) following the transfer of an interest described in section 864(c)(8) and proposed section 1.864(c)(8)–1.

Collections of Information—*Forms 1042, 1042-S, 8288, 8288-A, 8288-C, W-8IMY, W-8BEN, and W-8BEN-E*. Data for Forms 8288, 8288-A, W-8BEN, W-8BEN-E, and W-8IMY represent preliminary estimates of the total number of interests in partnerships, other than publicly traded partnership interests, engaged in the conduct of a trade or business in the United States that will be transferred by foreign persons. Data for Form 8288-C represent preliminary

estimates of the total number of transferees on whom partnerships must withhold tax under section 1446(f)(4) if the transferees do not fully withhold tax under section 1446(f)(1). Data for Form 1042-S represent preliminary estimates of the total number of interests in publicly traded partnership engaged in the conduct of a trade or business in the United States that will be transferred by foreign persons. This affiliated filing burden will be reported under the appropriate approval numbers of each form (Forms 1042 and 1042-S (1545-0096), 8288, 8288-A, 8288-C (1545-0902), and W-8IMY, W-8BEN, W-8BEN-E (1545-0123)).

These proposed regulations contain collections of information that are not on existing or new IRS forms. These collections of information include:

- (a) Notification by a transferor to a partnership that a transfer has occurred (proposed section 1.864(c)(8)-2(a));
- (b) Statement provided by a partnership to a transferor necessary for the transferor to calculate its tax liability (proposed section 1.864(c)(8)-2(b));
- (c) Retention of information by partnership in its books and records (proposed section 1.1446(f)-1(c)(3));
- (d) Certifications from a transferor (or partnership) to a transferee for an exception from withholding or adjustment to amount realized (proposed section 1.1446(f)-2(b)(2) through (7), (c)(2), and (c)(4));
- (e) Certification from a transferee to partnership regarding the transferee's withholding (proposed section 1.1446(f)-2(d)(2)).
- (f) Certifications from a transferor to a broker to apply an exception from withholding (proposed section 1.1446(f)-4(b)(2) and (6)); and
- (g) Information provided by a publicly traded partnership to a broker (proposed § 1.1446(f)-4(b)(3) and (4)).

Estimated total annual reporting burden:	50,920 hours.
Estimated average annual burden hours per respondent:	40 minutes.
Estimated cost per respondent (\$2016):	\$26.00.
Estimated total annual monetized cost (\$2016):	\$1,827,938.00.
Estimated number of respondents:	76,000.
Estimated annual frequency of responses:	0.4

Section	# Respondents	# Responses Per Respondent	# Annual Responses	Hours Per Response	Total Annual Burden
IRC 1446(f)	76,000	1	76,000	.67	50,920
TOTALS	76,000		76,000		50,920

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

1.864(c)(8)-2

1.1446(f)-2 through -4

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, the notice of proposed regulations, dated May 13, 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, IRS 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

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.

15. REASONS FOR CHANGE IN BURDEN

This document contains proposed regulations implementing certain sections of the Internal Revenue Code, including sections added to the Internal Revenue Code by the Tax Cuts and Jobs Act, that relate to the withholding of tax and information reporting with respect to certain dispositions of interests in partnerships engaged in the conduct of a trade or business within the United States. These proposed regulations contain collections of information that are not on existing or new IRS forms. This will create new burden with an estimated number of responses of 76,000 and annual burden increase of 50,920 hours.

	Requested	Program Change	Program Change	Change Due to	Change Due to	Previously Approved
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		Due to New Statute	Due to Agency Discretion	Adjustment in Agency Estimate	Potential Violation of the PRA	
Annual Number of Responses	76,000	76,000	0	0	0	0
Annual Time Burden (Hr)	50,920	50,920	0	0	0	0

We are making this submission to request new 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 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 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 if 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.