

SUPPORTING STATEMENT T.D. 8537

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The final regulations provide rules for the carryover of a debtor's passive activity loss and credit under section 469 and any "at risk" losses under section 465 to the bankruptcy estate. These regulations apply to cases under chapter 7 or chapter 11 of title 11 of the United States Code commencing on or after the date of publication. Generally, these regulations do not apply to cases commenced prior to the date of publication. However, the regulations provide for a joint election to have these regulations apply to cases commenced prior to the date of the publication and that are open within the meaning of section 350 of title 11 of the United States Code on that date.

2. USE OF DATA

In a case under chapter 7, the regulations require the written consent of the trustee before a valid election is made. In a case under chapter 11, the election is valid only if it is made as part of a bankruptcy plan that is confirmed by the court or pursuant to an order of the court. On any returns affected by the election, the debtor and the estate must place the words "ELECTION PURSUANT TO SECTION 1.1398-1" or "ELECTION PURSUANT TO 1.1398-2" on the first page of the return. These requirements are necessary to ensure that the debtor and the estate are treating the debtor's passive activity loss and credit and any "at risk" losses under section 465 in a consistent manner. They are also necessary to give the Internal Revenue Service adequate notice that an election has been made.

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.

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

Not applicable.

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

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

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

The notice of proposed rulemaking was published in the Federal Register on November 9, 1992. A public hearing was held on January 25, 1993. The final regulations were published in the Federal Register on May 13, 1994 (59 FR 24935).

We received no comments during the comment period in response to the Federal Register notice dated March 31, 2011, (76 FR 17991).

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

Not applicable.

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

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Sections 1.1398-1(d) and -2(d) of the regulations provide for a joint election to have these regulations apply to cases commenced prior to the date of publication and that remain open within the meaning of section 350 of title 11 of the United States Code if, in a chapter 7 case, the trustee consents to the election in writing, or in a chapter 11 case, the election is made a part of the plan or reorganization or pursuant to an order of the court.

Additionally, the words "ELECTION PURSUANT TO SECTION 1.1398-1" or "ELECTION PURSUANT TO SECTION 1.1398-2" must be placed prominently on the first page of any return of the debtor and the estate to which the election applies. We estimate that 500 persons will make the joint election and that it will take an average of 10 minutes to meet the requirements of the election. The total burden of this reporting requirement will be 100 hours.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, Federal Register notice dated March 31, 2011, (76 FR 17991), 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

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the total burden previously approved by OMB.

This regulation is submitted for renewal purposes.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

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 ON OMB FORM 83-I

Not applicable.

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.