

SUPPORTING STATEMENT

Form 5213

Election to Postpone Determination as to whether the Presumption
Applies that an activity is engaged in for profit
1545-0195

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 183 of the Internal Revenue Code allows individuals to elect to postpone a determination as to whether an activity is entered into for profit or is in the nature of a non-deductible hobby. The election on Form 5213 allows taxpayers 5 years (7 years for breeding, training, showing or racing horses) to show a profit from an activity. Taxpayers must provide the information requested on Form 5213 in order to make the election.

2. USE OF DATA

IRS uses the data from the form to help verify the taxpayer's eligibility to make the election. The likely respondents are individuals, estates, trusts, partnerships (including limited liability companies or other entities that are treated as partnerships for Federal tax purposes), and S corporations.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

Form 5213 cannot be filed electronically, since its relatively low volume does not justify the cost electronic enabling.

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

There are no small entities affected by this collection.

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

IRS uses the data from the form to help verify the taxpayer's eligibility to make the election. If this information is not collected, or collected less frequently, the agency would not be aware that the taxpayer wants to postpone an IRS determination as to whether the presumption applies that they are engaged in an activity for profit. Without this knowledge, the agency may make a determination and assessment that is not in compliance with Section 183 of the Internal Revenue Code. To reverse the determination would cause more work and costs which negatively affect the agency and federal programs.

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

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding Form 5213.

In response to the **Federal Register** notice dated November 19, 2015 (80 FR 72940), we received no comments during the comment period regarding Form 5213.

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)" and "Individual Master File (IMF)" systems, and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS Treas/IRS 24.046 BMF, Treas/IRS 34.047 Audit Trail and Security Records, and Treas/IRS 24.030 CADE Individual Master File. 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

The burden estimate is as follows:

	<u>Number of Responses</u>	<u>Time per Response</u>	<u>Total Hours</u>
Form 5213	3,541	.78	2,762

The following regulations impose no additional burden. Please continue to assign OMB number 1545-0195 to these regulations.

1.183-1(a)&(c)	1.183-2, 3, 4
1.183-3(d)	12.9

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no start-up costs associated with this collection.

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 Form 5213 is \$7,552.

15. REASONS FOR CHANGE IN BURDEN

There are no changes to the form at this time. We are

submitting this request for renewal purposes only.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

14. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

See below.

15. 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.

OMB EXPIRATION DATE

We believe the public interest will be better served by not printing an expiration date on the form(s) in this package.

Printing the expiration date on the form will result in increased costs because of the need to replace inventories that become obsolete by passage of the expiration date each time OMB approval is renewed. Without printing the expiration date, supplies of the form could continue to be used.

The time period during which the current edition of the form(s) in this package will continue to be usable cannot be predicted. It could easily span several cycles of review and OMB clearance renewal. In addition, usage fluctuates unpredictably. This makes it necessary to maintain a substantial inventory of forms in the supply line at all times. This includes supplies owned by both the Government and the public. Reprinting of the form cannot be reliably scheduled to coincide with an OMB approval

expiration date. This form may be privately printed by users at their own expense. Some businesses print complex and expensive marginally punched continuous versions, their expense, for use in their computers. The form may be printed by commercial printers and stocked for sale. In such cases, printing the expiration date on the form could result in extra costs to the users.

Not printing the expiration date on the form(s) will also avoid confusion among taxpayers who may have identical forms with different expiration dates in their possession.

For the above reasons we request authorization to omit printing the expiration date on the form(s) in this package.