

SUPPORTING STATEMENT
Rules for certain rental real estate activities
OMB# 1545-2194

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 469 of the Internal Revenue Code generally imposes restrictions on the allowance of passive activity losses and credits in the case of individuals and certain other taxpayers.

TD 8645 contains final regulations providing rules for rental real estate activities of taxpayers engaged in certain real property trades or businesses. The regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993, and affect taxpayers subject to the limitations on passive activity losses and passive activity credits.

Revenue Procedure 2011-34 provides guidance under § 1.469-9(g) of the Income Tax Regulations allowing certain taxpayers to make late elections to treat all interests in rental real estate as a single rental real estate activity.

To make a late election the taxpayer must file the statement already required by § 1.469-9(g)(3) with the applicable service center. This Revenue Procedure requires that the taxpayer also include with the statement an explanation for why the taxpayer failed to file a timely election and must indicate that the statement is being filed pursuant to this Revenue Procedure.

2. USE OF DATA

The data will be used by the service center to determine whether the taxpayer has reasonable cause for failing to make a timely election under § 1.469-9(g). If so, the taxpayer will be given an extension of time to make the election without requesting a letter ruling.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

There are no plans to provide electronic filing because electronic filing is not appropriate for the collection of information in this submission.

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**

These documents provide rules relating to the treatment of rental real estate activities of certain taxpayers under the passive activity loss and credit limitations of section 469. Section 469 disallows losses from passive activities to the extent they exceed income from passive activities and similarly disallows credits from passive activities to the extent they exceed tax liability allocable to passive activities.

Consequences of less frequent collection on federal programs or policy activities could consist of a decrease in the amount of taxes collected by the Service, inaccurate and untimely filing of tax returns, and an increase in tax violations.

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**

OBRA 1993 added section 469(c)(7), which provides that rental real estate activities of qualifying taxpayers are not subject to the rule that treats all rental activities as passive. Thus, a rental real estate activity of a qualifying taxpayer is not passive if the taxpayer materially participates in the activity. Further, section 469(c)(7) provides that each of a qualifying taxpayer's interests in rental real estate is treated as a separate activity unless the taxpayer elects to treat all interests in rental real estate as a single activity.

On January 10, 1995, the IRS published in the Federal Register a notice of proposed rulemaking (60 FR 2557) to provide guidance regarding section 469(c)(7). A number of public comments were received concerning the proposed regulations, and a public hearing was held on May 11, 1995. After consideration of the comments received, the proposed regulations are adopted as revised in TD 8645.

The Revenue Procedure was published in 2011 as RP 2011-34.

In response to the Federal Register Notice, dated September 26, 2016 (81 FR 66129), we received no comments during the comment period for this Revenue Procedure.

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 "Individual Master File (IMF)" system and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS 24.030-CADE Individual Master File and IRS 34.037 IRS Audit Trail and Security Records System. The Internal Revenue Service PIAs 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**

We expect 2,000 annual respondents with an average annual burden per respondent of 30 minutes. Thus, the total annual burden would be approximately 1,000 hours.

13. **ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

There is no estimated cost burden to respondents.

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.