

SUPPORTING STATEMENT
Internal Revenue Service
Form 461
Limitation on Business Losses
OMB Number 1545-XXXX

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The Tax Cuts and Jobs Act of 2017 made changes limiting the losses attributable to the trade or businesses of noncorporate taxpayers. Losses in excess of a threshold amount (\$250,000 for all filers except for married filing jointly, which is \$500,000) are not allowed to be deducted in the current year. That amount is adjusted for inflation. However, the amount of the excess business loss is treated as a net operating loss carryover to the 2019 tax year. Use Form 461 to compute the excess business loss. The excess business loss is treated as an additional income item on the tax return.

2. USE OF DATA

IRS Small Business and Self-Employed Division is charged in implementing this provision. They will utilize the form to ensure that noncorporate taxpayers are appropriately reporting their business losses, which fulfill the requirements of IRC 461(l). This information will be used to match any reporting of losses on the tax returns (F1040, 1040NR, 1041, 1041-QFT, 1041-N, or 990-T).

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

This form can be electronically filed with the tax returns (F1040, 1040NR, 1041, 1041-QFT, 1041-N, or 990-T).

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

Small businesses should not be disadvantaged as the form has been structured to request the least amount of information and still satisfy the requirements of the statute and the needs of the Service.

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

Form 461 is used to compute the excess burden loss. The excess burden loss is treated as an additional income item on the tax return. Consequences of less frequent collection on federal programs or policy activities would consist of decreased amount of taxes collected by the Service, inaccurate and untimely filing of tax returns, and an increase in tax violations.

1. 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

In response to the *Federal Register* notice dated October 1, 2018 (83 FR 49456), we received a comment during the comment period regarding Form 461 instructions. The comment was received on October 12, 2018 from Marc J. Gerson & David W. Zimmerman from Miller & Chevalier, a Washington, DC law firm.

Mr. Gerson and Mr. Zimmerman stated a previous request was made in response to Notice 2018-43, 2018-20 I.R.B. 1 (a copy of the request was attached to this comment letter) to clarify that if a pass-through entity is engaged in a trade or business, the gain or loss recognized on the sale or disposition of an interest in the pass-through entity will be taken into account for purposes of Section 461(l) to the same extent that gain or loss on the sale of the entity's underlying assets would be subject to section 461(l).

Mr. Gerson and Mr. Zimmerman then requested the guidance above be utilized to update the following lines and sections to include the following additional italicized language:

1) Instructions for Form 461, Part II, Line 10 – *Also include the gain from the sale or exchange of a partnership interest or S corporation stock that is not attributable to a trade or business. You can determine this amount by subtracting the ratable amount of gain you would have reported if the partnership or S corporation had sold all of its trade or business assets at their fair market value from the gain you reported on lines 1 through 8 above from the sale of the partnership interest of S corporation stock.*

2) Instructions for Form 461, Part II, Line 11 – *Also include the loss from the sale or exchange of a partnership interest or S corporation stock that is not attributable to a trade or business. You can determine this amount by subtracting the ratable amount of loss you would have reported if the partnership or S corporation had sold all of its trade or business assets at their fair market value from the loss you reported on lines 1 through 8 above from the sale of the partnership interest or S corporation stock*

3) Instructions for Form 461 under “Definitions” – *For activities held by partnerships, S corporations and trusts, whether the activity qualifies as a trade or business is determined by the entity.*

On October 18, 2018, the IRS concluded the additional language suggested by Miller & Chevalier should not be incorporated in the Instructions for Form 461 because it was more suited for policy guidance document such as a regulation or revenue ruling instead of the instructions.

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**

The IRS is committed to protecting the privacy rights of America's taxpayers. These rights are protected by the Internal Revenue Code, the Privacy Act of 1974, the Freedom of Information Act, and IRS policies and practices. Visit the IRS Electronic Freedom of Information Act Reading Room for more information about these laws. We document much of our internal policy on these laws in IRM 10.5.1, Privacy Policy.

The Senior Agency Official for Privacy (SAOP), as mandated by OMB M-16-24, has overall responsibility and accountability for ensuring the agency's implementation of information privacy protections, including the agency's full compliance with federal laws, regulations, and policies relating to information privacy. The SAOP for the IRS is positioned at the Department of Treasury.

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 <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.

This is an attachment to the Federal tax return. The Privacy Act statement associated with this attachment is listed in the Federal tax return instructions.

12. **ESTIMATED BURDEN OF INFORMATION COLLECTION**

The estimated burden for business taxpayers filing this form is approved under OMB control number 1545-0123 and is included in the estimates shown in the instructions for their business income tax return.

The estimated burden for all other taxpayers who file this form is shown below.

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
IRC 461 (I)	F461	2,909,026	1	2,909,026	0.38	1,105,430
Totals				2,909,026		1,105,430

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

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.

1. REASONS FOR CHANGE IN BURDEN

This is a new form developed as a result of the Tax Cuts and Jobs Act of 2017 limiting the losses attributable to the trade or businesses of noncorporate taxpayers. Losses in excess of a threshold amount (\$250,000 for all filers except for married filing jointly, which is \$500,000) are not allowed to be deducted in the current year. That amount is adjusted for inflation. However, the amount of the excess business loss is treated as a net operating loss carryover to the 2019 tax year. Use the new Form 461 to compute the excess business loss. The excess business loss is treated as an additional income item on the tax return. The burden listed below is applicable to all other filers except business filers which is accounted for under OMB control number 1545-0123.

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses for this IC	2909026	2909026	0	0	0	0
Annual IC Time Burden (Hours)	1105430	1105430	0	0	0	0

2. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

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

3. **REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE**

IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the form and/or 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.

4. **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.