

SUPPORTING STATEMENT

Internal Revenue Service

Election to Postpone Determination as to whether the Presumption

Applies that an activity is engaged in for profit

OMB# 1545-0195

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

In general, Section 183 provides rules relating to the allowance of deductions in the case of activities (whether active or passive in character) not engaged in for profit by individuals and electing small business corporations, creates a presumption that an activity is engaged in for profit if certain requirements are met, and permits the taxpayer to elect to postpone determination of whether such presumption applies until he has engaged in the activity for at least five taxable years, or, in certain cases, seven taxable years.

If an activity is not engaged in for profit, deductions are allowed under section 183(b). TD 7198 (37 FR 13679), published on July 13, 1972, contained the instructions for modifying the notice of proposed rulemaking published in 36 FR 16112, dated August 19, 1971, and the full context of the regulations with such modifications.

Taxpayers must use Form 5213 to make the election to postpone determination.

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

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

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

On August 19, 1971, a notice of proposed rulemaking with respect to amendment of Income Tax Regulations (26 CFR Part 1) under section 61, 162, 183, 212, and 270 of the Internal Revenue Code of 1954 to confirm such regulations to the changes made by section 213 of the Tax Reform Act of 1969 (83 Stat.571) [P.L.91-172, C.B. 1969-3, 10] was published in the Federal Register (36 F.R. 16112).

After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed were adopted and published in TD 7198 (37 F.R. 13679), on July 13, 1972.

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 14, 2018 (83 FR 56917), 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:

OMB Collectio n	Authority	Form	Annual Responses	Hours per Response	Total Burden
IRS 1545- 0195	IRC 183	5213	3,541	.78	2,762
	IRS TOTAL		3,541		2,762

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

1.183-1 1.183-2 1.183-3
1.183-4 12.9

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

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 burden, 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.

17. 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 regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of 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 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.