

**SUPPORTING STATEMENT**  
Internal Revenue Service  
Guidance Regarding Deduction and Capitalization of Expenditures  
OMB# 1545-1870

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

This collection contains final regulations that explain how section 263(a) of the Internal Revenue Code (Code) applies to amounts paid to acquire or create intangibles. This document also contains final regulations under section 167 of the Code that provide safe harbor amortization for certain intangibles, and final regulations under section 446 of the Code that explain the way taxpayers may deduct debt issuance costs.

The collection is necessary to support claim of a deduction under section 263(a) of the Internal Revenue Code. The information required to be retained by taxpayers will constitute enough documentation for purposes of substantiating a deduction. The collection is contained in section 1.263(a)-5(f).

2. USE OF DATA

The information will be used by the Internal Revenue Service during audits of taxpayers claiming a deduction for success-based fees.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS publication, 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. 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

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information requirement in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations merely require a taxpayer to retain records substantiating amounts paid in the process of investigating or otherwise pursuing certain transactions

involving the acquisition of a trade or business. Therefore, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. The Chief Counsel for Advocacy did not submit any comments on the regulations.

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

If the information is collected less frequently, the IRS would not be able to obtain the necessary information to support claim of a deduction under section 263(a) of the Internal Revenue Code. The information will be used during audits of taxpayers claiming a deduction for success-based fees.

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 January 24, 2002, the IRS and Treasury Department published an advance notice of proposed rulemaking in the Federal Register (REG-125638-01; 67 FR 3461) announcing an intention to provide guidance on the extent to which section 263(a) of the Internal Revenue Code (Code) requires taxpayers to capitalize amounts paid to acquire, create, or enhance intangible assets. A notice of proposed rulemaking was published in the Federal Register (REG-125638-01; 67 FR 77701) on December 19, 2002, proposing regulations under section 263(a) (relating to the capitalization requirement), section 167 (relating to safe harbor amortization) and section 446 (relating to the allocation of debt issuance costs). A public hearing was held on April 22, 2003. In addition, written comments responding to the notice of proposed rulemaking were received. After consideration of all of the public comments, the proposed regulations were adopted as revised in Treasury decision 9107 (69 FR 436), published January 5, 2004.

In response to the **Federal** register notice dated June 5, 2019, (84 FR 26179), we received no comments during the comment period regarding this guidance.

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

No personally identifiable information (PII) is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 1.263(a)-5(f) verifies the proper allocation of certain amounts paid in the process of investigating or otherwise pursuing certain transactions involving the acquisition of a trade or business. Taxpayers must maintain documentation to support a claimed deduction. The IRS estimates that the annual number of record-keepers will be 3,000 and that it will take 1 hour to keep records. The estimated total annual recordkeeping burden will be 3,000 hours.

The burden estimate is as follows:

<b>OMB Collection</b>	<b>Authority</b>	<b>Form</b>	<b>Annual Responses</b>	<b>Hours per Response</b>	<b>Total Burden</b>
IRS 1545- 1870	CFR 1.263(a)-5	---	3,000	1	3,000
	<b>IRS TOTAL</b>		<b>3,000</b>		<b>3,000</b>

The following regulations impose no additional burden. Please continue to assign OMB number 1545-1870 to these regulations.

1.263(a)-5

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated June 5, 2019, 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 responses from taxpayers on this subject. As a result, estimates of these cost burdens are not available currently.

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

There are no known annualized costs to the federal government.

15. REASONS FOR CHANGE IN BURDEN

There are no changes to the burden.

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.