

Supporting Statement  
Internal Revenue Service  
T.D. 8537, Carryover of Passive Activity Losses and Credits and At Risk Losses to Bankruptcy  
Estates of Individuals  
OMB Control Number 1545-1375

**1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

TD 8537, contains the final regulation that affect individual taxpayers who file bankruptcy petitions under chapter 7 or chapter 11 of title 11 of the United States Code and have passive activity losses and credits under section 469 or losses under section 465.

Internal Revenue Code (IRC), Section 469 defines passive activity losses and the credit limits applicable to those passive activity losses.

IRC Section 465 limits the losses that can be claimed for at-risk activities, and to ensure that losses claimed are valid.

IRC Section 1398, provides guidance relating to the application of carryover of passive activity losses and “at risk” losses to the bankruptcy estates of individuals. The regulations were amended to designate additional attributes that pass from the debtor to the bankruptcy estate under section 1398(g) of the Internal Revenue Code and that, upon termination of the estate, pass from the bankruptcy estate to the debtor under section 1398(i).

**2. USE OF DATA**

The provisions of §§1.1398-1 and 1.1398-2 are effective for bankruptcy cases commencing on or after November 9, 1992. For cases commenced before November 9, 1992, the regulations apply only if a joint election is made by the debtor and the estate. In cases under chapter 7, the election shall be valid only with the written consent of the bankruptcy trustee. In cases under chapter 11, the election is valid only if it is made as part of a bankruptcy plan that is confirmed by the court or into an order of the court.

On any returns affected by the election, the debtor and the estate must place the words “ELECTION PURSUANT TO SECTION §1.1398-1” or “ELECTION PURSUANT TO §1.1398-2” on the first page of the return. These requirements are necessary to ensure that the debtor and the estate are treating the debtor's passive activity loss and credit and any "at risk" losses under section 465 in a consistent manner and provides the Internal Revenue Service adequate notice that an election has been made.

3. **USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

The IRS has no plans to offer electronic enabling because this collection is a notification of the rules relating to the application of carryover of passive activity losses and “at risk” losses to the bankruptcy estates of individuals.

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**

The IRS proactively works with both internal and external stakeholders to minimize the burden on small businesses, while maintaining tax compliance. The Agency also seeks input regarding the burden estimates from the public via notices and tax product instructions. This information collection is for individual taxpayers; therefore, there will be minimal if any impact to small businesses.

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

Consequences of less frequent collection of recordkeeping on federal programs or policy activities would delay the necessary requirements to validate the carryover of passive activity losses and credits and at risk losses to bankruptcy estates of individuals; thereby endangering the IRS the inability to meet its mission.

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**

In response to the Federal Register notice dated December 15, 2020 (85 FR 81285), IRS received no comments during the comment period regarding TD 8537.

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)” system and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS 24.046-Customer Account Data Engine Business 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**

Sections 1.1398-1(f) and -2(f) of the regulations provide for a joint election to have these regulations apply to cases commenced prior to the date of publication and that remain open within the meaning of section 350 of title 11 of the United States Code if, in a chapter 7 case, the trustee consents to the election in writing, or in a chapter 11 case, the election is made a part of the plan or reorganization or pursuant to an order of the court.

Additionally, the words “ELECTION PURSUANT TO SECTION §1.1398-1” or “ELECTION PURSUANT TO SECTION §1.1398-2” must be placed prominently on the first page of any return of the debtor and the estate to which the election applies. We estimate that 500 respondents will spend an average of .20 hours to make this election, resulting in a burden for this collection of 100 hours

Burden estimate as follows:

Authority	Document	# Respondents	# Responses Per Respondent	Annual Responses	Hours Per Response	Total Burden
§1.1398-1 and 1.3198-2	TD 8537	500	1	500	.20	100
Total		500		500		100

The following regulations impose no additional burden. Please continue to assign OMB number 1545-1375 to these regulations.

1.1398-1	1.1398-2
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**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.

**15. REASONS FOR CHANGE IN BURDEN**

There is no change in the paperwork burden previously approved by OMB. IRS is making this submission 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 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 for this collection.

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.