

SUPPORTING STATEMENT
Internal Revenue Service
Limitations on Passive Activity Losses and Credits—
Treatment of Self-charged Items of Income and Expense
OMB# 1545-1244

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 469(a)(1)(A) of the Internal Revenue Code (Code) provides that if aggregate losses from passive activities exceed aggregate income from passive activities for the taxable year, the excess losses are not allowable for that taxable year.

TD 9013, published August 21, 2002 (67 F.R. 54087), provide guidance on the treatment of self-charged items of income and expense under section 469. The regulations recharacterize a percentage of certain portfolio income and expense as passive income and expense (self-charged items) when a taxpayer engages in a lending transaction with a partnership or an S corporation (passthrough entity) in which the taxpayer owns a direct or indirect interest and the loan proceeds are used in a passive activity. Similar rules apply to lending transactions between two identically owned passthrough entities. These final regulations affect taxpayers subject to the limitations on passive activity losses and credits.

Regulation section 1.469-7(g) permits entities to elect to avoid application of section 1.469-7 in the event the passthrough entity chooses to not have the income from lending transactions with owners of interests in the entity recharacterized as passive activity gross income.

2. USE OF DATA

Responses to this collection of information are required to obtain the benefit of self-charged treatment of income and expense under section 469. The Internal Revenue Service will use this information to determine whether the entity has made a proper timely election and to determine that taxpayers are complying with the election in the taxable year of the election and subsequent taxable years.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, 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. There are no plans to provide electronic filing because electronic filing is not appropriate for the collection of information in this submission due to the requirement to attach the document of record.

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 collection of information requirement will not have a significant economic impact on a substantial number of small entities.

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

Taxpayers may request to elect to avoid application of section 469. A less frequent collection would prevent the taxpayer from applying this benefit and hinder the IRS from meeting 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

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 these regulations.

In response to the Federal Register notice dated August 24, (86 FR 47369), we received no comments during the comment period regarding this guidance.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

There is no sensitive personally identifiable information (PII) in this collection.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The collection of information in this regulation is in section 1.469-7(g). This information is required by the Internal Revenue Service to determine which passthrough entities elect to avoid application of this regulation. We estimate that approximately 50,000 passthrough entities will be eligible to make the election described in section 1.469-7(g). We estimate that elections will be made with respect to 1,000 of such entities, with a total annual burden of approximately 100 hours.

	Total Responses	Hours per responses	Total burden hours
1.469-7(g)	1,000	.1	100
Totals	1,000		100 hrs.

Please continue to assign OMB number 1545-1244 to these regulations.

1.469-7

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. At the present time, the IRS estimates an annual governmental cost to be nominal.

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

IRS believes 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.

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.