



**Note:** *The draft you are looking for begins on the next page.*

## **Caution: DRAFT—NOT FOR FILING**

This is an early release draft of an IRS tax form, instructions, or publication, which the IRS is providing for your information. **Do not file draft forms** and do **not** rely on draft forms, instructions, and pubs for filing. We incorporate all significant changes to forms posted with this coversheet. However, unexpected issues occasionally arise, or legislation is passed—in this case, we will post a new draft of the form to alert users that changes were made to the previously posted draft. Thus, there are never any changes to the last posted draft of a form and the final revision of the form. Forms and instructions are subject to OMB approval before they can be officially released, so we post drafts of them until they are approved. Drafts of instructions and pubs usually have some additional changes before their final release. Early release drafts are at [IRS.gov/DraftForms](https://www.irs.gov/DraftForms) and remain there after the final release is posted at [IRS.gov/LatestForms](https://www.irs.gov/LatestForms). Also see [IRS.gov/Forms](https://www.irs.gov/Forms).

Most forms and publications have a page on IRS.gov: [IRS.gov/Form1040](https://www.irs.gov/Form1040) for Form 1040; [IRS.gov/Pub501](https://www.irs.gov/Pub501) for Pub. 501; [IRS.gov/W4](https://www.irs.gov/W4) for Form W-4; and [IRS.gov/ScheduleA](https://www.irs.gov/ScheduleA) for Schedule A (Form 1040), for example, and similarly for other forms, pubs, and schedules for Form 1040. When typing in a link, type it into the address bar of your browser, not a Search box on IRS.gov.

If you wish, you can submit comments to the IRS about draft or final forms, instructions, or pubs at [IRS.gov/FormsComments](https://www.irs.gov/FormsComments). Include “NTF” followed by the form or pub number (for example, “NTF1040”, “NTFW4”, “NTF501, etc.) in the body of the message to route your message properly. We cannot respond to all comments due to the high volume we receive and may not be able to consider many suggestions until the subsequent revision of the product, but we will review each “NTF” message. If you have comments on reducing paperwork and respondent (filer) burden, with respect to draft or final forms, please respond to the relevant information collection through the Federal Register process; for more info, click [here](#).



# Instructions for Form 461

## Limitation on Business Losses

Section references are to the Internal Revenue Code unless otherwise noted.

## General Instructions

### Future Developments

Go to [IRS.gov/Form461](https://www.irs.gov/Form461) for the latest information about Form 461 and its instructions.

### Reminders

**Limitation on excess business losses of noncorporate taxpayers.** The disallowance of excess business losses is effective for tax years beginning after 2020 and before 2029.

**Excess business losses.** Excess business losses are now computed without regard to any deduction allowed under section 172 or 199A and without regard to any deductions, gross income, or gains attributable to any trade or business of performing services as an employee.

**Treatment of capital gains and losses.** Losses from sales or exchanges of capital assets are not included in the calculation of the total deductions from your trades or businesses.

Gains from sales or exchanges of capital assets should not exceed the lesser of capital gain net income limited to only gains and losses attributable to a trade or business, or capital gain net income.

### Purpose of Form

The Tax Cuts and Jobs Act limited the amount of losses from the trades or businesses of noncorporate taxpayers that the taxpayers can claim each year. Taxpayers can't deduct an excess business loss (see [Definitions](#), later) in the current year. However, the excess business loss is treated as a net operating loss (NOL) carryover. See [Pub. 536, Net Operating Losses \(NOLs\) for Individuals, Estates, and Trusts](#), for more information on NOL carryovers. Use Form 461 to figure the excess business loss. See [Who Must File](#) and the instructions for [Line 16](#), later, to find where to report the excess business loss on your return.

### Who Must File

File Form 461 if you're a noncorporate taxpayer and your net losses from all of your trades or businesses are more than \$289,000 (\$578,000 for taxpayers filing a joint return). A trust subject to tax under section 511 should complete Form 461 if it has a loss attributable to its trade or business of more than \$289,000. See [Definitions](#), later. Attach Form 461 to the applicable tax return you file.

- Form 1040, U.S. Individual Income Tax Return.
- Form 1040-SR, U.S. Tax Return for Seniors.
- Form 1040-NR, U.S. Nonresident Alien Income Tax Return.
- Form 1041, U.S. Income Tax Return for Estates and Trusts.
- Form 1041-QFT, U.S. Income Tax Return for Qualified Funeral Trusts.

- Form 1041-N, U.S. Income Tax Return for Electing Alaska Native Settlement Trusts.
- Form 990-T, Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e)).

### Definitions

**Excess business loss.** An excess business loss is the amount by which the total deductions (computed without regard to any deduction allowed under section 172 or 199A) from your trades or businesses are more than your total gross income or gains from your trades or businesses, plus the threshold amount. Such excess losses should be determined without regard to any deductions, gross income, or gains attributable to any trade or business of performing services of an employee.

**Threshold amount.** For 2023, the threshold amount is \$289,000 (\$578,000 for taxpayers filing a joint return). These amounts are indexed for inflation.

**Treatment of capital gains and losses.** Losses from sales or exchanges of capital assets are not included in the calculation of the total deductions from your trades or businesses.

Gains from the sales or exchanges of capital assets should not exceed the lesser of:

1. Capital gain net income limited to only gains and losses attributable to a trade or business, or
2. Capital gain net income.

**Trade or business.** An activity qualifies as a trade or business if your primary purpose for engaging in the activity is for income or profit and you're involved in the activity with continuity and regularity. The facts and circumstances of each case determine if an activity is a trade or business. The regularity of activities and transactions and the production of income are important elements. You don't need to actually make a profit to be in a trade or business as long as you have a profit motive. However, you do need to make ongoing efforts to further the interests of your business.

**Note.** If you own an interest in a partnership or S corporation, the trade or business determination is made at that entity's level.

### Ordering Rules

First, apply the at-risk rules; next, apply the passive activity loss rules; and then apply the excess business loss rules. See the [Instructions for Form 6198, At-Risk Limitations](#). Also, see [Pub. 925, Passive Activity and At-Risk Rules](#).

**Farming losses.** Taxpayers with losses from a farming business must apply the excess business loss limitation before carrying any NOLs back 2 years. See the [Instructions for Form 1045, Application for Tentative Refund](#).

**Farming and nonfarming losses.** If you incur both farming and nonfarming business losses that are more than the threshold amount (see [Definitions](#), earlier), you must allocate

the threshold amount first to the farming losses to the extent you have an NOL.

## Transition Rules

If you had losses or deductions that were limited under other provisions of the Internal Revenue Code in prior tax years, those losses or deductions are included in figuring the amount, if any, of your excess business loss in the current year.

## Additional Information

See the following publications for more information about the items in these instructions.

- Pub. 225, Farmer's Tax Guide.
- Pub. 536, Net Operating Losses (NOLs) for Individuals, Estates, and Trusts.
- Pub. 925, Passive Activity and At-Risk Rules.

## Specific Instructions

**Joint returns.** Complete one Form 461 containing all the information for both spouses.

**Amended returns.** Attach Form 461 to any applicable amended returns.

### Part I—Total Income/Loss Items

Use Part I to report all the income and losses reflected on your applicable tax return. If you're filing a return other than Form 1040 or 1040-SR, see the instructions below for the specific line that's an equivalent to the line on Form 1040 or 1040-SR. If the line instructions don't reference a form listed under [Who Must File](#), earlier, then it's not applicable.

#### Line 1

Leave line 1 blank.

#### Line 2

Enter any business income or loss reported on Schedule 1 (Form 1040), line 3, or Form 1041, line 3.

#### Line 3

Enter any capital gains or losses reported on Form 1040 or 1040-SR, line 7; Form 1040-NR, line 7; Form 1041, line 4; Form 1041-QFT, Part II, line 3; or Form 1041-N, Part II, line 3.

Losses from sales or exchanges of capital assets are not included in the calculation of the total deductions from your trades or businesses.

Gains from the sales or exchanges of capital assets should not exceed the lesser of capital gain net income limited to only gains and losses attributable to a trade or business, or capital gain net income. So any such amounts included here in Line 3 should be added back on line 11 to remove them from the computation.

#### Line 4

Enter any other gains or losses reported on Schedule 1 (Form 1040), line 4; Form 1041, line 7; Form 1041-QFT, Part II, line 4; or Form 1041-N, Part II, line 4.

#### Line 5

Enter any supplemental income or loss reported on a Schedule E, such as income from rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc. This is reported on Schedule 1 (Form 1040), line 5; Form

1041, line 5; Form 1041-QFT, Part II, line 4; or Form 1041-N, Part II, line 4.

#### Line 6

Enter any farm income or loss reported on Schedule 1 (Form 1040), line 6; Form 1041, line 6; Form 1041-QFT, Part II, line 4; or Form 1041-N, Part II, line 4.

#### Line 7

Leave line 7 blank.

#### Line 8

Enter any other trade or business income, gain, or loss not reported on lines 1 through 7 that you reported on your tax return.

#### Line 9

Combine all the entries from lines 1 through 8 on line 9. The resulting figure can be a positive or negative number.

### Part II—Adjustment for Amounts not Attributable to Trade or Business

Use Part II to report the income, gain, or loss from your tax return that's not from a trade or business. The information will then be used to figure the excess business loss. See [Definitions](#), earlier.

#### Line 10

Enter the combined amount of income or gain you reported on lines 1 through 8 above that's not from a trade or business. See [Definitions](#), earlier. If you filed a tax return other than a Form 1040, see the specific line references for the tax return in the specific line instructions in [Part I](#), earlier.

#### Line 11

Enter the combined amount of losses or deductions you reported on lines 1 through 8 above that's not from a trade or business. See the definition of a [trade or business](#), earlier. If you filed a tax return other than a Form 1040, see the specific line references for the tax return in the specific line instructions in [Part I](#), earlier.



*Although losses and deductions are usually entered as negative figures on other forms or worksheets, enter them as a positive figure on this line.*

Losses from sales or exchanges of capital assets are not included in the calculation of trade or business deduction. Such amounts included on Line 3 should be added back here to remove it from the computation.

#### Line 12

Subtract line 11 from line 10. The resulting figure is your gain or loss that's not from a trade or business. Use this amount in [Part III](#) to figure your excess business loss. See [Definitions](#), earlier.

### Part III—Limitation on Losses

Use Part III to apply the threshold limitation and figure the excess business loss. See [Definitions](#), earlier.

#### Line 14

Add lines 9 and 13. The resulting figure can be a positive or negative number.

## Line 16

If the resulting figure on this line is a negative amount, then it's your excess business loss. See [Definitions](#), earlier. Although it's a loss, you will report the excess business loss adjustment as a positive number on the "Other income" line on your tax return and enter "ELA" on the dotted line. For Schedule 1 (Form 1040), enter any excess business loss adjustment on line 8p. The "Other Income" lines are located on the following lines based on the type of tax return.

- Form 1041, line 8.
- Form 1041-QFT, Part II, line 4.
- Form 1041-N, Part II, line 4.
- Schedule A (Form 990-T), Part I, line 12 (applicable to trusts only).



You'll need to keep a record of your excess business loss from each tax year because it's treated as an NOL carryover. See [Pub. 536, Net Operating Losses \(NOLs\) for Individuals, Estates, and Trusts](#) for more information on NOL carryovers and reporting NOLs on future tax year returns.

---

**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need this information to ensure that you're complying with these laws and to allow us to figure and collect the right amount of tax. Our legal right to ask for the information requested on this form is sections 6001, 6011, 6012(a), and 6109 and their regulations. If you don't provide this information, or you provide incomplete or false information, you may be subject to penalties.

You're not required to provide the information requested on a form that's subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103. However, we may give this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual and business taxpayers filing this form is approved under OMB control numbers 1545-0074 and 1545-0123 and is included in the estimates shown in the instructions for their individual and business income tax return. The estimated burden for all other taxpayers who file this form is shown below.

**Preparing the form.** . . . . . 23 min.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.