

SUPPORTING STATEMENT

Internal Revenue Service (IRS)

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/she 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. 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.

2. USE OF DATA

IRS uses the data from the form to help verify the taxpayer's eligibility to make the election.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

Form 5213 can be filed electronically with the taxpayer's return.

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.

1. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

There are no small entities affected by this collection.

2. 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.

3. 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 June 25, 2025, (90 FR 27390), the agency received no comments during the comment period regarding Form 5213.

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

No payment or gift has been provided to any respondents.

2. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

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

3. 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.

The Privacy Act Notice can be found in the forms instructions.

4. ESTIMATED BURDEN OF INFORMATION COLLECTION

The burden associated with individual filers is reported under 1545-0074. The burden estimate for businesses and trust/estate filers is as follows:

OMB Collection	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

5. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

This information collection will be added to the consolidated OMB submission for business returns and for trust/estate returns.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

The Federal Government cost estimate is based on a model that considers the following three cost factors for each information product: aggregate labor costs for development, including annualized startup expenses, operating and maintenance expenses, and distribution of the product that collects the information. These costs do not include any activities such as taxpayer assistance and enforcement.

The government computes cost using a multi-step process. First, the government creates a weighted factor for the level of effort to create each information collection product based on variables, such as complexity, number of pages, type of product, and frequency of revision. Second, the total costs associated with developing the product such as labor cost, and operating expenses associated with the downstream impact such as support functions, are added together to obtain the aggregated total cost. Then, the aggregated total cost and factor are multiplied together to obtain the aggregated cost per product. Lastly, the aggregated cost per product is added to the cost of shipping and printing each product to IRS offices, National Distribution Center, libraries, and other outlets. The result is the government cost estimate per product.

The government cost estimate for this collection is summarized in the table below.

Product	<u>Aggregate Cost per Product (factor applied)</u>	<u>Printing and Distribution</u>	<u>Government Cost Estimate per Product</u>
Form 5213	\$ \$19,417	\$0	\$ \$19,417
Table costs are based on 2023 actuals obtained from IRS Chief Financial Office and Media and Publications			

15. REASONS FOR CHANGE IN BURDEN

There are no changes to the burden at this time.

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 collection sunsets as of the expiration date. Taxpayers are not likely to be aware that the IRS 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.