

**Election To Postpone Determination
as To Whether the Presumption Applies That an
Activity Is Engaged in for Profit**

► To be filed by individuals, estates, trusts, partnerships, and S corporations.

Name(s) as shown on tax return

Identifying number as shown on tax return

Address (number and street, apt. no., rural route) (or P.O. box number if mail is not delivered to street address)

City, town or post office, state, and ZIP code

The taxpayer named above elects to postpone a determination as to whether the presumption applies that the activity described below is engaged in for profit. The determination is postponed until the close of:

- The 6th tax year, for an activity that consists mainly of breeding, training, showing, or racing horses or
- The 4th tax year for any other activity,

after the tax year in which the taxpayer first engaged in the activity.

1 Type of taxpayer engaged in the activity (check the box that applies):

Individual Partnership S corporation Estate or trust

2a Description of activity for which you elect to postpone a determination

2b First tax year you engaged in activity described in 2a

Under penalties of perjury, I declare that I have examined this election, including accompanying schedules, and to the best of my knowledge and belief, it is true, correct, and complete.

(Signature of taxpayer or fiduciary)

(Date)

(Signature of taxpayer's spouse, if joint return was filed)

(Date)

(Signature of general partner authorized to sign partnership return)

(Date)

(Signature and title of officer, if an S corporation)

(Date)

General Instructions

Purpose of Form

Use Form 5213 to elect to postpone an IRS determination as to whether the presumption applies that an activity is engaged in for profit.

General Information

Generally, if you are an individual, estate, trust, partnership, or S corporation in an activity not engaged in for profit, some of your deductions may not be allowed. However, an activity is presumed to be engaged in for profit (and, therefore, deductions are not limited) if the gross income exceeds the deductions:

- From an activity that consists mainly of breeding, training, showing, or racing horses for each of 2 or more of the tax years in the period of 7 consecutive tax years ending with the tax year in question or
- From any other activity for each of 3 or more of the tax years in the period of 5 consecutive tax years ending with the tax year in question.

For information on the limits on deductions in not-for-profit activities, see Pub. 535, Business Expenses.

Who Should File

Individuals, estates, trusts, partnerships (including limited liability companies or other entities that are treated as partnerships for Federal tax purposes), and S corporations should use this form if they want to postpone an IRS determination as to whether the presumption applies that they are engaged in an activity for profit. An election made by a partnership or an S corporation is binding on all persons who were partners or shareholders at any time during the presumption period.

You may not use this form if you have been engaged in:

- Breeding, training, showing, or racing horses for more than 7 years or
- Any other activity for more than 5 years.

If you elect a postponement and file this form on time, the IRS will generally postpone the determination until after the end of the 4th consecutive tax year (6th tax year for an activity that consists mainly of breeding, training, showing, or racing horses) after the tax year in which you first engaged in the activity. This period of 5 (or 7) tax years is called the "presumption period." The election to postpone covers the entire presumption period.

Joint Returns

If you and your spouse filed a joint return, both of you must elect to postpone the determination even if only one of you is engaged in the activity.

How Many Forms To File

Generally, if you want a postponement for more than one activity, you must file a separate Form 5213 for each activity. However, you may file one form for more than one activity if all of the activities have the same presumption period. Be sure to describe each activity in detail and list the first tax year in which you were engaged in the activities.

Generally, in determining whether you are engaged in more than one activity, you must consider all of the following:

- The similarity of the activities,
- The business purpose that is (or might be) served by carrying on the activities separately or together in a trade or business or investment setting, and
- The organizational and economic interrelationship of the activities.

When To File

File this form within 3 years after the due date of your return (determined without extensions) for the first tax year in which you engaged in the activity. However, if you received a written notice that the IRS proposes to disallow deductions attributable to an activity not engaged in for profit (under Internal Revenue Code section 183) and you want a postponement of the determination, you must file this form within 60 days after receiving the notice. This 60-day period does not extend the 3-year period referred to above.

Where To File

File this form with the Internal Revenue Service Center where you are required to file your return. Do not send it in with any other return because that will delay processing the election to postpone. However, if the IRS notifies you about proposing to disallow deductions for an activity not engaged in for profit, file the form with the IRS office that sent you the notification.

Automatic Extension of Period of Limitations

Generally, filing this form automatically extends the period of limitations for assessing any income tax deficiency specifically attributable to the activity during any year in the presumption period. The extension also applies to partners or shareholders in the activity.

The period is extended until 2 years after the due date for filing the return (determined without extensions) for the last tax year in the presumption period. For example, for an activity subject to a 5-year presumption period that began in 2003 and ends in 2007, the period of limitations automatically extends to April 15, 2010, for all tax years in the presumption period that would otherwise expire before that date. Periods of limitations for tax years in the 5-year period expiring after April 15, 2010, would remain open until their normal expiration date. However, early termination of the presumption period does not terminate the automatic extension of the period of limitations.

The automatic extension applies only to those deductions attributable to the activity and to any deductions (such as medical expenses or charitable contribution deductions) that are affected by changes made to adjusted gross income.

The automatic extension does not affect general waivers of the statute of limitations that may be executed.

Specific Instructions

Name and Identifying Number as Shown on Tax Return

Enter your name(s) and identifying number as shown on your tax return for the first tax year

in which you engaged in the activity. If you are an individual, your identifying number is your social security number (SSN). If you are other than an individual, your identifying number is your employer identification number (EIN).

If you and your spouse filed a joint return, enter both your name and your spouse's name as they were shown on your tax return. Enter the SSN that was shown first on your return as your identifying number.

Signature and Date

Be sure to sign and date the form on the appropriate line or lines. Keep a copy for your records.

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 determine your eligibility for making the election to postpone determination as to whether the presumption applies that an activity is engaged in for profit. If you make this election, you are required by Internal Revenue Code section 183 to provide the information requested on this form. Under section 6109, you must disclose your SSN, individual taxpayer identification number (ITIN), or EIN. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia for use in administering 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. If you fail to provide this information in a timely manner, or provide incomplete or false information, you may be liable for interest and penalties.

You are not required to provide the information requested on a form that is 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 Code section 6103.

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

- Recordkeeping** 7 min.
- Learning about the law or the form** 10 min.
- Preparing the form** 10 min.
- Copying, assembling, and sending the form to the IRS** . . . 20 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.