

## SUPPORTING STATEMENT

### 1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Under section 469 taxpayers may group one or more activities together for purposes of determining whether the activities are passive or non-passive activities. A decision to group or not group together activities can have a substantial tax effect under section 469, which was enacted to prevent the proliferation of tax shelters. Although authorized under regulations, the IRS has yet to issue guidance requiring taxpayers to disclose to the IRS their chosen groupings. Because no guidance has been issued, IRS field personnel have had tremendous difficulty identifying a taxpayer's groupings, and many taxpayers have opportunistically claimed various groupings depending upon the most favorable tax outcome - undermining the purpose of section 469.

### 2. USE OF DATA

The IRS will retain the disclosed information so that IRS field personnel may consult it when a taxpayer is audited, for litigation purposes, and in other circumstances where the need to identify the taxpayer's chosen groupings is at issue.

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

There are no plans to provide electronic filing because electronic filing is not appropriate for the collection of information in this submission.

### 4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

### 5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Not applicable.

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

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

We will publish a notice in the Federal Register in the near future to solicit public comments on this revenue procedure.

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

Not applicable.

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

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The estimated number of annual respondents to whom this revenue procedure will apply is 144,000. The actual disclosure requirements are minimal. Taxpayers need only list the various activities that constitute the grouping and provide an EIN (if applicable) and address. Most taxpayers will only have a few activities. Thus, the estimated annual burden per respondent for the taxable years to which this revenue procedure applies varies from 10 minutes to 20 minutes, with an average of 15 minutes, though individual

circumstances will vary. The estimated total annual reporting burden for the taxable years to which this revenue procedure applies is 39,000 hours. These estimates come from Lucy Clark, former National Passive Activities Loss Technical Advisor.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

Not applicable. This is a new collection.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe 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 ON OMB FORM 83-I

Not applicable.

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.

REASON FOR EMERGENCY

This revenue procedure has already been approved by Treasury and is ready for publication. Immediate approval is requested to track how taxpayers have chosen to treat their business activities relative to code section 469. Delay in approval would hinder the IRS's ability to audit taxpayer's whose grouped activities may be at issue. This is the most pressing issue under section 469.