

Election to Postpone Determination with Respect to the Presumption that an Activity is Engaged in for Profit

Name of taxpayer(s)

Identifying number (See instruction H)

Address (Number and street)

City, town or post office, State and ZIP code

The above named taxpayer(s) hereby makes the election set forth in section 183(e) of the Internal Revenue Code to postpone a determination as to whether the presumption that an activity described below is engaged in for profit until the close of:

- (a) the fourth taxable year, or
- (b) sixth taxable year in case of an activity which consists in major part of the breeding, training, showing, or racing of horses

following the taxable year in which he first engaged in such activity.

Activity	
Description (See instruction A) <i>(If more space is needed attach schedule)</i>	First taxable year in which engaged (See instruction A)

Name, Address, and Identifying Number of Partnership(s) (See instruction A)

Name	Address (Number, street, city or town, State, and ZIP code)	Identifying number

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)

 (Date)

 (Signature and title of officer, if a small business corporation)

 (Date)

Instructions

A. Who May Make Election.—Form 5213 (Election to Postpone Determination) is to be used by individuals, trusts, estates, and electing small business corporations in making an election under section 183(e) of the Internal Revenue Code. The election postpones a determination as to whether the presumption provided by section 183(d) of the Internal Revenue Code, that an activity is engaged in for profit, applies to such activity. If a timely election is made, the determination will not be made until after the close of the fourth taxable year (sixth taxable year, in the case of an activity which consists in major part of the breeding, training, showing, or racing of horses) following the taxable year in which you first engaged in such activity. The five (seven)-year period is called the "presumption period." For purposes of this election, you will be treated as not having engaged in an activity during any taxable year beginning before January 1, 1970.

If you engaged in more than one activity for which you wish to make the election, you must separately describe each activity. Each activity engaged in as a partner, even though similar in nature to an activity engaged in as an individual or as a partner in another partnership, is a separate activity. The name of the partnership must be listed in the Activity section of Form 5213 in addition to fully identifying the partnership in the space provided.

Where joint returns were filed for any year during the presumption period, both spouses must make the election.

B. Time for Making an Election.—Your election should be made by filing Form 5213 and Form 5214 (Consent Extending Period of Limitations for Assessment of Income Tax) within:

- (1) 3 years after the due date of your return (determined without extensions) for the taxable year in which you first engaged in the activity, but not later than
- (2) 60 days after you receive a written notice from a district director that the district director proposes to disallow deductions attributable to an activity not engaged in for profit under section 183 of the Internal Revenue Code.

The 60 day provision of instruction B(2) shall not be considered as extending the 3 year limitation of instruction B(1) for making an election. If, prior to the close of the taxable years in the presumption period, a timely election has not been made by you before a suit or proceeding described in section 7422 of the Internal Revenue Code is maintained or a petition is filed in the Tax Court for a redetermination of a deficiency for any taxable year within the presumption period to which the election would apply, no election may be made except with the consent of the Commissioner. The election, though timely filed, will not be effective unless a

timely consent Form 5214 is executed and attached to the election Form 5213 by the electing party within the time prescribed for making an election.

C. Period Covered by Election.—The period covered by the election is the first taxable year in which you first engage in the activity and all subsequent years in the presumption period.

D. Manner of Making Election.—An election shall be made by an individual, trust, estate, or electing small business corporation engaged in the activity by completing and filing Form 5213.

For the election to be effective, there must be attached a properly executed consent Form 5214 for:

- (1) Each taxpayer's taxable years in the presumption period to which the election applies.
- (2) Each person who is a shareholder in an electing small business corporation during any taxable year to which the election applies. The shareholder's consent will be for the taxable year in the presumption period with or within which the small business corporation's taxable year ends.
- (3) Each taxpayer referred to in (1) and (2) who is married at the time of election and who files (or has filed) a joint return with a spouse must file a consent for each of his spouse's taxable years which correspond to his taxable years (other than prior years of the shareholder during no part of which he was a shareholder) for which consents are required in (1) and (2).

E. Where to File.—Form 5213 together with Form 5214 should be filed with the service center where your return is required to be filed. If you are notified by a district director that he is proposing to disallow deductions with respect to an activity not engaged in for profit, the election should be filed with such district director.

F. Form 5214, Consent Extending Period of Limitations for Assessment of Income Tax.—Each taxpayer must complete and file Form 5214 in duplicate to extend the time prescribed by section 6501 (normally three years) for the assessment of tax for all taxable years in the period to which the election applies. Each copy of Form 5214 should be signed separately (no carbon or facsimile signatures will be accepted). The consent must be for a period which ends not earlier than 18 months after the due date (determined without extensions) of the return for the fourth taxable year (sixth taxable year, in the case of an activity which consists in major part of the breeding, training, showing, or racing of horses) after the taxable year during which such activity was begun. Thus, for an activity

subject to a 5 year period which was begun in 1972, you would list on the consent the years ending 12/31/72, 12/31/73, 12/31/74, 12/31/75, and 12/31/76 with an extension date not earlier than 10/15/78. The consent shall not be construed to shorten the period described in section 6501 of the Internal Revenue Code for any taxable year within the presumption period.

G. Invalidation After Timely Election.— If for any year within the presumption period, a suit or proceeding described in section 7422(a) of the Internal Revenue Code is maintained by the electing taxpayer, a shareholder referred to in instruction D(2), a spouse referred to in instruction D(3) and a notice of deficiency as described in section 6212 of the Internal Revenue Code has not been issued, the election shall not be effective to postpone the determination as to whether the presumption applies. However, the consent extending the statute of limitations filed with the election shall not be invalidated.

The preceding shall not apply to a suit or proceeding maintained by the spouse of an electing taxpayer for a taxable year for which the spouse has filed a separate return, or a suit or proceeding maintained by a shareholder for a taxable year in which he was not a shareholder.

An election by an individual taxpayer or electing small business corporation, shall be subsequently invalidated for all years in the presumption period to which it had applied if:

- (1) The electing taxpayer or shareholder taxpayer files a joint return for one of the first three (five, in the case of an activity which consists in major part of the breeding, training, showing, or racing of horses) taxable years in the presumption period, and
- (2) The spouse with whom he files a joint return has not previously executed a consent Form 5214, and
- (3) Within one year after the filing of a joint return the spouse has not filed a consent Form 5214.

An election by an electing small business corporation shall be invalidated for all years in the presumption period to which it applies if a person who was not a shareholder on the date of election becomes a shareholder during the first three (or five) years of the presumption period to which the election applies and does not, within 90 days after the date on which he becomes a shareholder, file a consent Form 5214. Invalidation of the election by failure of a new shareholder to file a consent Form 5214 will not invalidate the consents filed with the election.

H. Identifying Number.—Individuals must enter their social security number. All others must enter their employer identification number.