

to the fund and the fund's holding period is determined under section 1223(2). The fund's gross income includes the rents collected by R and any income earned thereon. For the period between February 1, 2005, and June 1, 2006, the fund may be allowed deductions for depreciation and for the costs of maintenance of the property because the fund is treated as owning the property during this period. See sections 162, 167, and 168. Under paragraph (c)(4)(ii) of this section, the fund may not deduct the distribution to C of the property, or the rents (or any income earned thereon) collected from the property while the fund holds the property. No gain or loss is recognized by the fund from this distribution or from the fund's transfer of the rental property to C pursuant to the court's determination that C owns the property. See paragraphs (c)(4)(i) and (e)(3) of this section.

(vi) B is the transferor to the fund. Under paragraphs (b)(8) and (e)(1) of this section, B is a transferor-claimant and does not recognize gain or loss under section 1001(a) on transfer of the property to the disputed ownership fund. The money and property distributed from the fund to C is deemed to be distributed first to B and then transferred from B to C. See paragraph (e)(3)(ii) of this section. Under paragraph (e)(2)(i) of this section, economic performance occurs when the disputed ownership fund transfers the property and any earnings thereon to C. The income tax consequences of the deemed transfer from B to C as well as the income tax consequences of C's refund to B of the purchase price paid to C's father and interest thereon are determined under other provisions of the Internal Revenue Code.

(i) [Reserved]

(j) *Effective dates*—(1) *In general.* This section applies to disputed ownership funds established after February 3, 2006.

(2) *Transition rule.* With respect to a disputed ownership fund established after August 16, 1986, but on or before February 3, 2006, the Internal Revenue Service will not challenge a reasonable, consistently applied method of taxation for income earned by the fund, transfers to the fund, and distributions made by the fund.

[T.D. 9249, 71 FR 6202, Feb. 7, 2006]

#### § 1.469-0 Table of contents.

This section lists the captions that appear in the regulations under section 469.

##### § 1.469-1 *General rules.*

(a)–(c)(7) [Reserved]

(c)(8) Consolidated groups.

(c)(9)–(d)(1) [Reserved]

(2) Coordination with sections 613A(d) and 1211.

(d)(3)–(e)(1) [Reserved]

(2) Trade or business activity.

(e)(3)(i)–(e)(3)(ii) [Reserved]

(iii) Average period of customer use.

(A) In general.

(B) Average use factor.

(C) Average period of customer use for class of property.

(D) Period of customer use.

(E) Class of property.

(F) Gross rental income and daily rent.

(e)(3)(iv)–(e)(3)(vi)(C) [Reserved]

(D) Lodging rented for convenience of employer.

(E) Unadjusted basis.

(e)(3)(vii)–(e)(4)(iii) [Reserved]

(iv) Definition of “working interest.”

(e)(4)(v)–(vi) [Reserved]

(5) Rental of dwelling unit.

(e)(6)–(f)(3)(iii) [Reserved]

(4) Carryover of disallowed deductions and credits.

(i) In general.

(ii) Operations continued through C corporations or similar entities.

(iii) Examples.

(g)(1)–(g)(4)(ii)(B) [Reserved]

(4)(ii)(C) (no paragraph heading)

(5) [Reserved]

(h)(1) In general.

(2) Definitions.

(3) [Reserved]

(4) Status and participation of members.

(i) Determination by reference to status and participation of group.

(ii) Determination of status and participation of consolidated group.

(5) [Reserved]

(6) Intercompany transactions.

(i) In general.

(ii) Example.

(iii) Effective dates.

(h)(7)–(k) [Reserved]

##### § 1.469-1T *General rules (temporary).*

(a) Passive activity loss and credit disallowed.

(1) In general.

(2) Exceptions.

(b) Taxpayers to whom these rules apply.

(c) Cross references.

(1) Definition of passive activity.

(2) Passive activity loss.

(3) Passive activity credit.

(4) Effect of rules for other purposes.

(5) Special rule for oil and gas working interests.

(6) Treatment of disallowed losses and credits.

(7) Corporations subject to section 469.

(8) [Reserved]

(9) Joint returns.

(10) Material participation.

(11) Effective date and transition rules.

- (12) Future regulations.
- (d) Effect of section 469 and the regulations thereunder for other purposes.
  - (1) Treatment of items of passive activity income and gain.
  - (2) Coordination with sections 613A(d) and 1211. [Reserved]
  - (3) Treatment of passive activity losses.
  - (e) Definition of “passive activity.”
    - (1) In general.
    - (2) Trade or business activity. [Reserved]
    - (3) Rental Activity.
      - (i) In general.
      - (ii) Exceptions.
      - (iii) Average period of customer use. [Reserved]
        - (A) In general. [Reserved]
        - (B) Average use factor. [Reserved]
        - (C) Average period of customer use for class of property. [Reserved]
        - (D) Period of Customer use. [Reserved]
        - (E) Class of property. [Reserved]
        - (F) Gross rental income and daily rent. [Reserved]
      - (iv) Significant personal services.
        - (A) In general.
        - (B) Excluded services.
      - (v) Extraordinary personal services.
      - (vi) Rental of property incidental to a nonrental activity of the taxpayer.
        - (A) In general.
        - (B) Property held for investment.
        - (C) Property used in a trade or business.
        - (D) Lodging rented for convenience of employer. [Reserved]
        - (E) Unadjusted basis. [Reserved]
      - (vii) Property made available for use in a nonrental activity conducted by a partnership, S corporation or joint venture in which the taxpayer owns an interest.
        - (viii) Examples.
    - (4) Special rules for oil and gas working interests.
      - (i) In general.
      - (ii) Exception for deductions attributable to a period during which liability is limited.
        - (A) In general.
        - (B) Coordination with rules governing the identification of disallowed passive activity deductions.
          - (C) Meaning of certain terms.
            - (1) Allocable deductions.
            - (2) Disqualified deductions.
            - (3) Net loss.
            - (4) Ratable portion.
          - (iii) Examples.
        - (iv) Definition of “working interest.” [Reserved]
        - (v) Entities that limit liability.
          - (A) General rule.
          - (B) Other limitations disregarded.
          - (C) Examples.
        - (vi) Cross reference to special rule for income from certain oil or gas properties.
      - (5) Rental of dwelling unit. [Reserved]
      - (6) Activity of trading personal property.
        - (i) In general.
        - (ii) Personal property.
        - (iii) Example.
      - (f) Treatment of disallowed passive activity losses and credits.
        - (1) Scope of this paragraph.
        - (2) Identification of disallowed passive activity deductions.
          - (i) Allocation of disallowed passive activity deductions.
            - (A) General rule.
            - (B) Loss from an activity.
            - (C) Significant participation passive activities.
              - (D) Examples.
          - (ii) Allocation with loss activities.
            - (A) In general.
            - (B) Excluded deductions.
          - (iii) Separately identified deductions.
            - (3) Identification of disallowed credits from passive activities.
              - (i) General rule.
              - (ii) Coordination rule.
              - (iii) Separately identified credits.
            - (4) Carryover of disallowed deductions and credits. [Reserved]
              - (i) In general.
              - (ii) Operations continued through C corporations or similar entities.
              - (iii) Examples.
              - (g) Application of these rules to C corporations.
                - (1) In general.
                - (2) Definitions.
                - (3) Participation of corporations.
                  - (i) Material participation.
                  - (ii) Significant participation.
                  - (iii) Participation of individual.
                - (4) Modified computation of passive activity loss in the case of closely held corporations.
                  - (i) In general.
                  - (ii) Net active income.
                  - (iii) Examples.
                - (5) Allowance of passive activity credit of closely held corporations to extent of net active income tax liability.
                  - (i) In general.
                  - (ii) Net active income tax liability.
                - (h) Special rules for affiliated group filing consolidated return.
                  - (1)-(2) [Reserved]
                  - (3) Disallowance of consolidated group’s passive activity loss or credit.
                  - (4) Status and participation of members. [Reserved]
                    - (i) Determination by reference to status and participation of group. [Reserved]
                    - (ii) Determination of status and participation of consolidated group. [Reserved]
                  - (5) Modification of rules for identifying disallowed passive activity deductions and credits.
                    - (i) Identification of disallowed deductions.
                    - (ii) Ratable portion of disallowed passive activity losses.
                    - (iii) Identification of disallowed credits.
              - (6) [Reserved]

**Internal Revenue Service, Treasury**

**§ 1.469-0**

- (7) Disposition of stock of a member of an affiliated group.
- (8) Dispositions of property used in multiple activities.
  - (i) [Reserved]
  - (j) Spouses filing joint returns.
    - (1) In general.
  - (2) Exceptions of treatment as one taxpayer.
    - (i) Identification of disallowed deductions and credits.
    - (ii) Treatment of deductions disallowed under sections 704(d), 1366(d) and 465.
    - (iii) Treatment of losses from working interests.
    - (3) Joint return no longer filed.
    - (4) Participation of spouses.
    - (k) Former passive activities and changes in status of corporations. [Reserved]

*§ 1.469-2 Passive activity loss.*

- (a)-(c)(2)(ii) [Reserved]
- (iii) Disposition of substantially appreciated property formerly used in a nonpassive activity.
  - (A) In general.
  - (B) Date of disposition.
  - (C) Substantially appreciated property.
  - (D) Investment property.
  - (E) Coordination with § 1.469-2T(c)(2)(ii).
  - (F) Coordination with section 163(d).
  - (G) Examples.
  - (iv) Taxable acquisitions.
  - (v) Property held for sale to customers.
- (A) Sale incidental to another activity.
- (I) Applicability.
  - (i) In general.
  - (ii) Principal purpose.
    - (2) Dealing activity not taken into account.
    - (B) Use in a nondealing activity incidental to sale.
    - (C) Examples.
    - (c)(3)-(c)(5) [Reserved]
    - (6) Gross income from certain oil or gas properties.
      - (i) In general.
      - (ii) Gross and net passive income from the property.
      - (iii) Property.
        - (iv) Examples 1 and 2.
    - (c)(6)(iv) Example 3-(c)(7)(iii) [Reserved]
    - (c)(7)(iv) through (vi) (no paragraph headings)
      - (d)(1)-(d)(2)(viii) [Reserved]
      - (d)(2)(ix) through (d)(2)(xii) (no paragraph headings)
        - (d)(3)-(d)(5)(ii) [Reserved]
        - (d)(5)(iii)(A) Applicability of rules in § 1.469-2T(c)(2).
        - (d)(5)(iii)(B)-(d)(6)(v)(D) [Reserved]
        - (d)(6)(v)(E) (no paragraph heading)
        - (d)(6)(v)(F)-(d)(7) [Reserved]
      - (8) Taxable year in which item arises.
    - (e)(1)-(e)(2)(i) [Reserved]
    - (ii) Section 707(c).

- (iii) Payments in liquidation of a partner's interest in partnership property.
  - (A) In general.
  - (B) Payments in liquidation of a partner's interest in unrealized receivables and goodwill under section 736(a).
    - (e)(3)(i)-(iii)(A) [Reserved]
    - (e)(3)(iii)(B) (no paragraph heading)
    - (e)(3)(iii)(C)-(f)(4) [Reserved]
  - (5) Net income from certain property rented incidental to development activity.
    - (i) In general.
    - (ii) Commencement of use.
    - (iii) Services performed for the purpose of enhancing the value of property.
    - (iv) Examples.
  - (6) Property rented to a nonpassive activity.
    - (f)(7)-(f)(9)(ii) [Reserved]
    - (f)(9)(iii) through (f)(9)(iv) (no paragraph heading).
    - (10) Coordination with section 163(d).
    - (f)(11) [Reserved]

*§ 1.469-2T Passive activity loss (temporary).*

- (a) Scope of this section.
- (b) Definition of passive activity loss.
  - (1) In general.
  - (2) Cross reference.
  - (c) Passive activity group income.
    - (1) In general.
    - (2) Treatment of gain from disposition of an interest in an activity or an interest in property used in an activity.
      - (i) In general.
      - (A) Treatment of gain.
      - (B) Dispositions of partnership interest and S corporation stock.
      - (C) Interest in property.
      - (D) Examples.
      - (ii) Disposition of property used in more than one activity in 12-month period preceding disposition.
      - (iii) Disposition of substantially appreciated property used in nonpassive activity. [Reserved]
        - (A) In general. [Reserved]
        - (B) Date of disposition. [Reserved]
        - (C) Substantially appreciated property. [Reserved]
        - (D) Investment property. [Reserved]
        - (E) Coordination with paragraph (c)(2)(ii) of this section. [Reserved]
        - (F) Coordination with section 163(d). [Reserved]
        - (G) Examples. [Reserved]
        - (iv) Taxable acquisitions. [Reserved]
        - (v) Property held for sale to customers. [Reserved]
      - (A) Sale incidental to another activity. [Reserved]
      - (I) Applicability. [Reserved]
        - (i) In general. [Reserved]
        - (ii) Principal purpose. [Reserved]
        - (2) Dealing activity not taken into account. [Reserved]

- (B) Use in a nondealing activity incidental to sale. [Reserved]
- (C) Examples. [Reserved]
- (3) Items of portfolio income specifically excluded.
  - (i) In general.
  - (ii) Gross income derived in the ordinary course of a trade or business.
  - (iii) Special rules.
    - (A) Income from property held for investment by dealer.
    - (B) Royalties derived in the ordinary course of the trade or business of licensing intangible property.
      - (1) In general.
      - (2) Substantial services or costs.
        - (i) In general.
        - (ii) Exception.
        - (iii) Expenditures taken into account.
      - (3) Passthrough entities.
      - (4) Cross reference.
    - (C) Mineral production payments.
      - (iv) Examples.
  - (4) Items of personal service income specifically excluded.
    - (i) In general.
    - (ii) Example.
  - (5) Income from section 481 adjustments.
    - (i) In general.
    - (ii) Positive section 481 adjustments.
      - (iii) Ratable portion.
  - (6) Gross income from certain oil or gas properties. [Reserved]
    - (i) In general. [Reserved]
    - (ii) Gross and net passive income from the properties. [Reserved]
    - (iii) Property. [Reserved]
    - (iv) Examples.
  - (7) Other items specifically excluded.
- (d) Passive activity deductions.
  - (1) In general.
  - (2) Exceptions.
  - (3) Interest expense.
  - (4) Clearly and directly allocable expenses.
  - (5) Treatment of loss from disposition.
    - (i) In general.
    - (ii) Disposition of property used in more than one activity in 12-month period preceding disposition.
      - (iii) Other applicable rules.
        - (A) Applicability or rules in paragraph (c)(2).
        - (B) Dispositions of partnership interest and S corporation stock.
          - (6) Coordination with other limitations on deductions that apply before section 469.
            - (i) In general.
            - (ii) Proration of deductions disallowed under basis limitations.
              - (A) Deductions disallowed under section 704(d).
              - (B) Deductions disallowed under section 1366(d).
                - (iii) Proration of deductions disallowed under at-risk limitations.
                - (iv) Coordination of basis and at-risk limitations.

- (v) Separately identified items of deduction and loss.
- (7) Deductions from section 481 adjustment.
  - (i) In general.
  - (ii) Negative section 481 adjustment.
  - (iii) Ratable portion.
  - (8) Taxable year in which item arises.
  - (e) Special rules for partners and S corporation shareholders.
    - (1) In general.
    - (2) Payments under sections 707(a), 707(c), and 736(b).
      - (i) Section 707(a).
      - (ii) Section 707(c).
      - (iii) Payments in liquidation of a partner's interest in partnership property.
        - (A) In general.
        - (B) Payments in liquidation of a partner's interest of a partnership property.
        - (3) Sale or exchange of interest in pass-through entity.
          - (i) Application of this paragraph (e)(3).
          - (ii) General rule.
            - (A) Allocation among activities.
            - (B) Ratable portions.
              - (1) Disposition on which gain is recognized.
              - (2) Disposition on which loss is recognized.
            - (C) Default rule.
            - (D) Special rules.
            - (1) Applicable valuation date.
              - (i) In general.
              - (ii) Exception.
                - (2) Basis adjustment.
                - (3) Tiered passthrough entities.
              - (E) Meaning of certain terms.
                - (iii) Treatment of gain allocated to certain passive activities as not from a passive activity.
                  - (iv) Dispositions occurring in taxable years beginning before February 19, 1988.
                    - (A) In general.
                    - (B) Exceptions.
                  - (v) Treatment of portfolio assets.
                  - (vi) Definitions.
                  - (vii) Examples.
                - (f) Recharacterization of passive income in certain situations.
                  - (1) In general.
                  - (2) Special rule for significant participation.
                    - (i) In general.
                    - (ii) Significant participation passive activity.
                      - (iii) Example.
                      - (3) Rental of nondepreciable property.
                      - (4) Net interest income from passive equity-financed lending activity.
                        - (i) In general.
                        - (ii) Equity-financed lending activity.
                          - (A) In general.
                          - (B) Certain liabilities not taken into account.
                            - (iii) Equity-financed interest income.
                            - (iv) Net interest income.
                            - (v) Interest-bearing assets.
                            - (vi) Liabilities incurred in the activity.

## Internal Revenue Service, Treasury

## § 1.469-0

- (vii) Average outstanding balance.
- (viii) Example.
- (5) Net income from certain property rented incidental to development activity.
  - (i) In general. [Reserved]
  - (ii) Commencement of use. [Reserved]
  - (iii) Services performed for the purpose of enhancing the value of property. [Reserved]
  - (iv) Examples. [Reserved]
  - (6) Property rented to a nonpassive activity.
  - (7) Special rules applicable to the acquisition of an interest of a passthrough entity engaged in the trade or business of licensing intangible property.
    - (i) In general.
    - (ii) Royalty income from property.
    - (iii) Exceptions.
    - (iv) Capital expenditures.
    - (v) Example.
    - (8) Limitation on recharacterized income.
    - (9) Meaning of certain terms.
    - (10) Coordination with section 163(d).
    - (11) Effective date.

### § 1.469-3 *Passive activity credit.*

- (a)-(d) [Reserved]
- (e) Coordination with section 38(b).
- (f) Coordination with section 50.
- (g) [Reserved]

### § 1.469-3T *Passive activity credit (temporary).*

- (a) Computation of passive activity credit.
- (b) Credits subject to section 469.
  - (1) In general.
  - (2) Treatment of credits attributed to qualified progress expenditures.
  - (3) Special rule for partners and S corporations shareholders.
  - (4) Exception for pre-1987 credits.
  - (c) Taxable year to which credit is attributable.
  - (d) Regular tax liability allocable to passive activities.
    - (1) In general.
    - (2) Regular tax liability.
    - (e) Coordination with section 38(b). [Reserved]
    - (f) Coordination with section 47. [Reserved]
    - (g) Examples.

### § 1.469-4 *Definition of activity.*

- (a) Scope and purpose.
- (b) Definitions.
  - (1) Trade or business activities.
  - (2) Rental activities.
  - (c) General rules for grouping activities.
    - (1) Appropriate economic unit.
    - (2) Facts and circumstances test.
    - (3) Examples.
    - (d) Limitation on grouping certain activities.
      - (1) Grouping rental activities with other trade or business activities.
        - (i) Rule.
        - (ii) Examples.

- (2) Grouping real property rentals and personal property rentals prohibited.
- (3) Certain activities of limited partners and limited entrepreneurs.
  - (i) In general.
  - (ii) Example.
  - (4) Other activities identified by the Commissioner.
  - (5) Activities conducted through section 469 entities.
    - (i) In general.
    - (ii) Cross reference.
    - (e) Disclosure and consistency requirements.
      - (1) Original groupings.
      - (2) Regroupings.
      - (f) Grouping by Commissioner to prevent tax avoidance.
        - (1) Rule.
        - (2) Example.
        - (g) Treatment of partial dispositions.
        - (h) Rules for grouping rental real estate activities for taxpayers qualifying under section 469(c)(7).

### § 1.469-5 *Material participation.*

- (a)-(e) [Reserved]
- (f) Participation.
  - (1) In general.
  - (f)(2)-(h)(2) [Reserved]
  - (3) Coordination with rules governing the treatment of passthroughs entities.
    - (i) [Reserved]
    - (j) Material participation for preceding taxable years.
      - (1) In general.
      - (2) Material participation test for taxable years beginning before January 1, 1987
      - (k) Examples (1)-(4). [Reserved]
      - (k) Example 5.
      - (k) Examples (6)-(8). [Reserved]

### § 1.469-5T *Material participation (temporary).*

- (a) In general.
- (b) Facts and circumstances.
  - (1) In general. [Reserved]
  - (2) Certain participation insufficient to constitute material participation under this paragraph (b).
    - (i) Participation satisfying standards not contained in section 469.
      - (ii) Certain management activities.
      - (iii) Participation less than 100 hours.
      - (c) Significant participation activity.
        - (1) In general.
        - (2) Significant participation.
        - (d) Personal service activity.
        - (e) Treatment of limited partners.
          - (1) General rule.
          - (2) Exceptions.
          - (3) Limited partnership interest.
            - (i) In general.
            - (ii) Limited partner holding general partner interest.
            - (f) Participation. [Reserved]
            - (1) In general. [Reserved]

**§ 1.469-0**

- (2) Exceptions.
    - (i) Certain work not customarily done by owners.
      - (ii) participation as an investor.
        - (A) In general.
        - (B) Work done in individual's capacity as an investor.
    - (3) Participation of spouses.
    - (4) Methods of proof.
    - (g) Material participation of trust and estates. [Reserved]
    - (h) Miscellaneous rules.
      - (1) Participation of corporations.
      - (2) Treatment of certain retired farmers and surviving spouses of retired or disabled farmers.
      - (3) Coordination with rules governing the treatment of passthroughs entities. [Reserved]
        - (i) [Reserved]
        - (j) Material participation for preceding taxable years. [Reserved]
          - (1) In general. [Reserved]
          - (2) Material participation for taxable years beginning before January 1, 1987. [Reserved]
        - (k) Examples.
- § 1.469-6 Treatment of losses upon certain dispositions. [Reserved]*
- § 1.469-7 Treatment of self-charged items of interest income and deduction.*
- (a) In general.
    - (1) Applicability and effect of rules.
    - (2) Priority of rules in this section.
  - (b) Definitions.
    - (1) Passthrough entity.
    - (2) Taxpayer's share.
    - (3) Taxpayer's indirect interest.
    - (4) Entity taxable year.
    - (5) Deductions for a taxable year.
  - (c) Taxpayer loans to passthrough entity.
    - (1) Applicability.
    - (2) General rule.
    - (3) Applicable percentage.
  - (d) Passthrough entity loans to taxpayer.
    - (1) Applicability.
    - (2) General rule.
    - (3) Applicable percentage.
  - (e) Identically-owned passthrough entities.
    - (1) Applicability.
    - (2) General rule.
    - (1) Example.
  - (f) Identification of properly allocable deductions.
    - (g) Election to avoid application of the rules of this section.
      - (1) In general.
      - (2) Form of election.
      - (3) Period for which election applies.
      - (4) Revocation.
      - (h) Examples.

**26 CFR Ch. I (4-1-10 Edition)**

- § 1.469-8 Application of section 469 to trust, estates, and their beneficiaries. [Reserved]*
- § 1.469-9 Rules for certain rental real estate activities.*
- (a) Scope and purpose.
  - (b) Definitions.
    - (1) Trade or business.
    - (2) Real property trade or business.
    - (3) Rental real estate.
    - (4) Personal services.
    - (5) Material participation.
    - (6) Qualifying taxpayer.
  - (c) Requirements for qualifying taxpayers.
    - (1) In general.
    - (2) Closely held C corporations.
    - (3) Requirement of material participation in the real property trades or businesses.
    - (4) Treatment of spouses.
    - (5) Employees in real property trades or businesses.
    - (d) General rule for determining real property trades or businesses.
      - (1) Facts and circumstances.
      - (2) Consistency requirement.
    - (e) Treatment of rental real estate activities of a qualifying taxpayer.
      - (1) In general.
      - (2) Treatment as a former passive activity.
      - (3) Grouping rental real estate activities with other activities.
        - (i) In general.
        - (ii) Special rule for certain management activities.
      - (4) Example.
      - (f) Limited partnership interests in rental real estate activities.
        - (1) In general.
        - (2) De minimis exception.
      - (g) Election to treat all interests in rental real estate as a single rental real estate activity.
        - (1) In general.
        - (2) Certain changes not material.
        - (3) Filing a statement to make or revoke the election.
        - (h) Interests in rental real estate held by certain passthrough entities.
          - (1) General rule.
          - (2) Special rule if a qualifying taxpayer holds a fifty-percent or greater interest in a passthrough entity.
          - (3) Special rule for interests held in tiered passthrough entities.
            - (i) [Reserved]
            - (j) \$25,000 offset for rental real estate activities of qualifying taxpayers.
              - (1) In general.
              - (2) Example.
- § 1.469-10 Application of section 469 to publicly traded partnerships. [Reserved]*
- § 1.469-11 Effective date and transition rules.*
- (a) Generally applicable effective dates.
  - (b) Additional effective dates.

(1) Application of 1992 amendments for taxable years beginning before October 4, 1994.

(2) Additional transition rule for 1992 amendments.

(3) Fresh starts under consistency rules.

(i) Regrouping when tax liability is first determined under Project PS-1-89.

(ii) Regrouping when tax liability is first determined under § 1.469-4.

(iii) Regrouping when taxpayer is first subject to section 469(c)(7).

(4) Certain investment credit property.

(c) Special rules.

(1) Application of certain income re-characterization rules and self-charged rules.

(i) Certain recharacterization rules inapplicable in 1987.

(ii) Property rented to a nonpassive activity.

(iii) Self-charged rules.

(2) Qualified low-income housing projects.

(3) Effect of events occurring in years prior to 1987.

(d) Examples.

[T.D. 8417, 57 FR 20748, May 15, 1992, as amended by T.D. 8477, 58 FR 11538, Feb. 26, 1993; T.D. 8495, 58 FR 58787, Nov. 4, 1993; T.D. 8565, 59 FR 50487, Oct. 4, 1994; T.D. 8597, 60 FR 36684, July 18, 1995; T.D. 8645, 60 FR 66498, Dec. 22, 1995; T.D. 9013, 67 FR 54089, Aug. 21, 2002]

### § 1.469-1 General rules.

(a)-(c)(7) [Reserved]

(c)(8) *Consolidated groups.* Rules relating to the application of section 469 to consolidated groups are contained in paragraph (h) of this section.

(c)(9)-(d)(1) [Reserved]

(d)(2) *Coordination with sections 613A(d) and 1211.* A passive activity deduction that is not disallowed for the taxable year under section 469 and the regulations thereunder may nonetheless be disallowed for the taxable year under section 613A(d) or 1211. The following example illustrates the application of this paragraph (d)(2):

*Example.* In 1993, an individual derives \$10,000 of ordinary income from passive activity X, no gains from the sale or exchange of capital assets or assets used in a trade or business, \$12,000 of capital loss from passive activity Y, and no income, gain, deductions, or losses from any other passive activity. The capital loss from activity Y is a passive activity deduction (within the meaning of § 1.469-2T(d)). Under section 469 and the regulations thereunder, the taxpayer is allowed \$10,000 of the \$12,000 passive activity deduction and has a \$2,000 passive activity loss for the taxable year. Since the \$10,000 passive activity deduction allowed under section 469 is

a capital loss, such deduction is allowable for the taxable year only to the extent provided under section 1211. Therefore, the taxpayer is allowed \$3,000 of the \$10,000 capital loss under section 1211 and has a \$7,000 capital loss carryover (within the meaning of section 1212(b)) to the succeeding taxable year.

(d)(3)-(e)(1) [Reserved]

(e)(2) *Trade or business activities.* Trade or business activities are activities that constitute trade or business activities within the meaning of § 1.469-4(b)(1).

(e)(3)(i)-(e)(3)(ii) [Reserved]

(e)(3)(iii) *Average period of customer use—(A) In general.* For purposes of this paragraph (e)(3), the average period of customer use for property held in connection with an activity (the *activity's average period of customer use*) is the sum of the average use factors for each class of property held in connection with the activity.

(B) *Average use factor.* The average use factor for a class of property held in connection with an activity is the average period of customer use for that class of property multiplied by the fraction obtained by dividing—

(1) The activity's gross rental income attributable to that class of property; by

(2) The activity's gross rental income.

(C) *Average period of customer use for class of property.* In determining an activity's average period of customer use for a taxable year, the average period of customer use for a class of property held in connection with an activity is determined by dividing—

(1) The aggregate number of days in all periods of customer use for property in the class (taking into account only periods that end during the taxable year or that include the last day of the taxable year); by

(2) The number of those periods of customer use.

(D) *Period of customer use.* Each period during which a customer has a continuous or recurring right to use an item of property held in connection with the activity (without regard to whether the customer uses the property for the entire period or whether the right to use the property is pursuant to a single agreement or to renewals thereof) is treated for purposes of this paragraph (e)(3)(iii) as a separate period of customer use. The duration of a period of