

31, 1992, all events have occurred that determine the fact of the liability for the \$30,000 refund, Y incurs that amount for the 1992 taxable year. Because economic performance (payment) with respect to the remaining \$20,000 occurs after September 15, 1993 (more than 8½ months after the end of 1992), that amount is not eligible for recurring item treatment under this section. Thus, the \$20,000 amount is not incurred by Y until the 1993 taxable year.

Example 2. Requirements for use of the recurring item exception; amended returns. The facts are the same as in *Example 2*, except that Y files its income tax return for 1992 on March 15, 1993, and Y does not refund the price of any recorder before that date. Under paragraph (b)(1) of this section, the refund liability is not eligible for the recurring item exception because economic performance with respect to the refund does not occur before Y files a return for the taxable year for which the item would have been incurred under the exception. However, since economic performance occurs within 8½ months after 1992, Y may file an amended return claiming the \$30,000 as incurred for its 1992 taxable year (see paragraph (b)(2) of this section).

[T.D. 8408, 57 FR 12427, Apr. 10, 1992, as amended by T.D. 8593, 60 FR 18743, Apr. 13, 1995]

§ 1.461-6 Economic performance when certain liabilities are assigned or are extinguished by the establishment of a fund.

(a) *Qualified assignments of certain personal injury liabilities under section 130.* In the case of a qualified assignment (within the meaning of section 130(c)), economic performance occurs as a taxpayer-assignor makes payments that are excludible from the income of the assignee under section 130(a).

(b) *Section 468B.* Economic performance occurs as a taxpayer makes qualified payments to a designated settlement fund under section 468B, relating to special rules for designated settlement funds.

(c) *Payments to other funds or persons that constitute economic performance.* [Reserved]

(d) *Effective dates.* The rules in paragraph (a) of this section apply to payments after July 18, 1984.

[T.D. 8408, 57 FR 12428, Apr. 10, 1992]

§ 1.465-1T Aggregation of certain activities (temporary).

(a) *General rule.* A partner in a partnership or an S corporation share-

holder may aggregate and treat as a single activity—

(1) The holding, production, or distribution of more than one motion picture film or video tape by the partnership or S corporation,

(2) The farming (as defined in section 464 (e)) of more than one farm by the partnership or S corporation,

(3) The exploration for, or exploitation of, oil and gas resources with respect to more than one oil and gas property by the partnership or S corporation, or

(4) The exploration for, or exploitation of, geothermal deposits (within the meaning of section 613(e)(3)) with respect to more than one geothermal property by the partnership or S corporation.

Thus, for example, if a partnership or S corporation is engaged in the activity of exploring for, or exploiting, oil and gas resources with respect to 10 oil and gas properties, a partner or S corporation shareholder may aggregate those properties and treat the aggregated oil and gas activities as a single activity. If that partnership or S corporation also is engaged in the activity of farming with respect to two farms, the partner or shareholder may aggregate the farms and treat the aggregated farming activities as a single separate activity. Except as provided in section 465(c)(2)(B)(ii), the partner or shareholder cannot aggregate the farming activity with the oil and gas activity.

(b) *Effective date.* This section shall apply to taxable years beginning after December 31, 1983 and before January 1, 1985.

(Secs. 465(c)(2)(B) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 814, 68A Stat. 917; 26 U.S.C. 465(c)(2)(B) and 7805))

[T.D. 8012, 50 FR 9614, Mar. 11, 1985]

§ 1.465-8 General rules; interest other than that of a creditor.

(a) *In general—(1) Amounts borrowed.* This section applies to amounts borrowed for use in an activity described in section 465(c)(1) or (c)(3)(A). Amounts borrowed with respect to an activity will not increase the borrower's amount at risk in the activity if the lender has an interest in the activity other than that of a creditor or

is related to a person (other than the borrower) who has an interest in the activity other than that of a creditor. This rule applies even if the borrower is personally liable for the repayment of the loan or the loan is secured by property not used in the activity. For additional rules relating to the treatment of amounts borrowed from these persons, see § 1.465-20.

(2) *Certain borrowed amounts excepted.*

(i) For purposes of determining a corporation's amount at risk, an interest in the corporation as a shareholder is not an interest in any activity of the corporation. Thus, amounts borrowed by a corporation from a shareholder may increase the corporation's amount at risk.

(ii) For purposes of determining a taxpayer's amount at risk in an activity of holding real property, paragraph (a)(1) of this section does not apply to financing that is secured by real property used in the activity and is either—

(A) Qualified nonrecourse financing described in section 465(b)(6)(B); or

(B) Financing that, if it were nonrecourse, would be financing described in section 465(b)(6)(B).

(b) *Loans for which the borrower is personally liable for repayment—(1) General rule.* If a borrower is personally liable for the repayment of a loan for use in an activity, a person shall be considered a person with an interest in the activity other than that of a creditor only if the person has either a capital interest in the activity or an interest in the net profits of the activity.

(2) *Capital interest.* For the purposes of this section a capital interest in an activity means an interest in the assets of the activity which is distributable to the owner of the capital interest upon the liquidation of the activity. The partners of a partnership and the shareholders of an S corporation are considered to have capital interests in the activities conducted by the partnership or S corporation.

(3) *Interest in net profits.* For the purposes of this section it is not necessary for a person to have any incidents of ownership in the activity in order to have an interest in the net profits of the activity. For example, an employee or independent contractor any part of whose compensation is determined

with reference to the net profits of the activity will be considered to have an interest in the net profits of the activity.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example 1. A, the owner of a herd of cattle sells the herd to partnership BCD. BCD pays A \$10,000 in cash and executes a note for \$30,000 payable to A. Each of the three partners, B, C, and D, assumes personal liability for repayment of the amount owed A. In addition, BCD enters into an agreement with A under which A is to take care of the cattle for BCD in return for compensation equal to 6 percent of BCD's net profits from the activity. Because A has an interest in the net profits of BCD's farming activity, A is considered to have an interest in the activity other than that of a creditor. Accordingly, amounts payable to A for use in that activity do not increase the partners' amount at risk even though the partners assume personal liability for repayment.

Example 2. Assume the same facts as in *Example 1* except that instead of receiving compensation equal to 6 percent of BCD's net profits from the activity, A instead receives compensation equal to 1 percent of the gross receipts from the activity. A does not have a capital interest in BCD. A's interest in the gross receipts is not considered an interest in the net profits. Because B, C, and D assumed personal liability for the amounts payable to A, and A has neither a capital interest nor an interest in the net profits of the activity, A is not considered to have an interest in the activity other than that of a creditor with respect to the \$30,000 loan. Accordingly, B, C, and D are at risk for their share of the loan if the other provisions of section 465 are met.

Example 3. Assume the same facts as in *Example 1* except that instead of receiving compensation equal to 6 percent of BCD's net profits from the activity, A instead receives compensation equal to 6 percent of the net profits from the activity or \$15,000, whichever is greater. A is considered to have an interest in the net profits from the activity and accordingly will be treated as a person with an interest in the activity other than that of a creditor.

(c) *Nonrecourse loans secured by assets with a readily ascertainable fair market value—(1) General rule.* This paragraph shall apply in the case of a nonrecourse loan for use in an activity where the loan is secured by property which has a readily ascertainable fair market value. In the case of such a loan a person shall be considered a person with

an interest in the activity other than that of a creditor only if the person has either a capital interest in the activity or an interest in the net profits of the activity.

(2) *Example.* The provisions of this paragraph (c) may be illustrated by the following example:

Example. X is an investor in an activity described in section 465(c)(1). In order to raise money for the investment, X borrows money from A, the promoter (the person who brought X together with other taxpayers for the purpose of investing in the activity). The loan is secured by stock unrelated to the activity which is listed on a national securities exchange. X's stock has a readily ascertainable fair market value. A does not have a capital interest in the activity or an interest in its net profits. Accordingly, with respect to the loan secured by X's stock, A does not have an interest in the activity other than that of a creditor.

(d) *Nonrecourse loans secured by assets without a readily ascertainable fair market value—(1) General rule.* This paragraph shall apply in the case of a nonrecourse loan for use in an activity where the loan is secured by property which does not have a readily ascertainable fair market value. In the case of such a loan a person shall be considered a person with an interest in the activity other than that of a creditor if the person stands to receive financial gain (other than interest) from the activity or from the sale of interests in the activity. For the purposes of this section persons who stand to receive financial gain from the activity include persons who receive compensation for services rendered in connection with the organization or operation of the activity or for the sale of interests in the activity. Such a person will generally include the promoter of the activity who organizes the activity or solicits potential investors in the activity.

(2) *Example.* The provisions of this paragraph (d) may be illustrated by the following example:

Example. A is the promoter of an activity described in section 465(c)(1). As the promoter, A organizes the activity and solicits potential investors. For these services A is paid a flat fee of \$130x. This fee is paid out of the amounts contributed by the investors to the activity. X, one of the investors in the activity, borrows money from A for use in

the activity. X is not personally liable for repayment to A of the amount borrowed. As security for the loan, X pledges an asset which does not have a readily ascertainable fair market value. A is considered a person with an interest in the activity other than that of a creditor with respect to this loan because the asset pledged as security does not have a readily ascertainable fair market value. X is not personally liable for repayment of the loan, and A received financial gain from the activity. Accordingly, X's amount at risk in the activity is not increased despite the fact that property was pledged as security.

(e) *Effective date.* This section applies to amounts borrowed after May 3, 2004.

[T.D. 9124, 69 FR 24079, May 3, 2004; 69 FR 26305, May 12, 2004]

§ 1.465-20 Treatment of amounts borrowed from certain persons and amounts protected against loss.

(a) *General rule.* The following amounts are treated in the same manner as borrowed amounts for which the taxpayer has no personal liability and for which no security is pledged—

(1) Amounts that do not increase the taxpayer's amount at risk because they are borrowed from a person who has an interest in the activity other than that of a creditor or from a person who is related to a person (other than the taxpayer) who has an interest in the activity other than that of a creditor; and

(2) Amounts (whether or not borrowed) that are protected against loss.

(b) *Interest other than that of a creditor; cross reference.* See § 1.465-8 for additional rules relating to amounts borrowed from a person who has an interest in the activity other than that of a creditor or is related to a person (other than the taxpayer) who has an interest in the activity other than that of a creditor.

(c) *Amounts protected against loss; cross reference.* See § 1.465-6 for rules relating to amounts protected against loss.

(d) *Effective date.* This section applies to amounts borrowed after May 3, 2004.

[T.D. 9124, 69 FR 24079, May 3, 2004]