

§ 461. General rule for taxable year of deduction**(a) General rule**

The amount of any deduction or credit allowed by this subtitle shall be taken for the taxable year which is the proper taxable year under the method of accounting used in computing taxable income.

(b) Special rule in case of death

In the case of the death of a taxpayer whose taxable income is computed under an accrual method of accounting, any amount accrued as a deduction or credit only by reason of the death of the taxpayer shall not be allowed in computing taxable income for the period in which falls the date of the taxpayer's death.

(c) Accrual of real property taxes**(1) In general**

If the taxable income is computed under an accrual method of accounting, then, at the election of the taxpayer, any real property tax which is related to a definite period of time shall be accrued ratably over that period.

(2) When election may be made**(A) Without consent**

A taxpayer may, without the consent of the Secretary, make an election under this subsection for his first taxable year in which he incurs real property taxes. Such an election shall be made not later than the time prescribed by law for filing the return for such year (including extensions thereof).

(B) With consent

A taxpayer may, with the consent of the Secretary, make an election under this subsection at any time.

(d) Limitation on acceleration of accrual of taxes**(1) General rule**

In the case of a taxpayer whose taxable income is computed under an accrual method of accounting, to the extent that the time for accruing taxes is earlier than it would be but for any action of any taxing jurisdiction taken after December 31, 1960, then, under regulations prescribed by the Secretary, such taxes shall be treated as accruing at the time they would have accrued but for such action by such taxing jurisdiction.

(2) Limitation

Under regulations prescribed by the Secretary, paragraph (1) shall be inapplicable to any item of tax to the extent that its application would (but for this paragraph) prevent all persons (including successors in interest) from ever taking such item into account.

(e) Dividends or interest paid on certain deposits or withdrawable accounts

Except as provided in regulations prescribed by the Secretary, amounts paid to, or credited to the accounts of, depositors or holders of accounts as dividends or interest on their deposits or withdrawable accounts (if such amounts paid or credited are withdrawable on demand subject only to customary notice to withdraw) by a mutual savings bank not having capital stock rep-

resented by shares, a domestic building and loan association, or a cooperative bank shall not be allowed as a deduction for the taxable year to the extent such amounts are paid or credited for periods representing more than 12 months. Any such amount not allowed as a deduction as the result of the application of the preceding sentence shall be allowed as a deduction for such other taxable year as the Secretary determines to be consistent with the preceding sentence.

(f) Contested liabilities

If—

(1) the taxpayer contests an asserted liability,

(2) the taxpayer transfers money or other property to provide for the satisfaction of the asserted liability,

(3) the contest with respect to the asserted liability exists after the time of the transfer, and

(4) but for the fact that the asserted liability is contested, a deduction would be allowed for the taxable year of the transfer (or for an earlier taxable year) determined after application of subsection (h),

then the deduction shall be allowed for the taxable year of the transfer. This subsection shall not apply in respect of the deduction for income, war profits, and excess profits taxes imposed by the authority of any foreign country or possession of the United States.

(g) Prepaid interest**(1) In general**

If the taxable income of the taxpayer is computed under the cash receipts and disbursements method of accounting, interest paid by the taxpayer which, under regulations prescribed by the Secretary, is properly allocable to any period—

(A) with respect to which the interest represents a charge for the use or forbearance of money, and

(B) which is after the close of the taxable year in which paid,

shall be charged to capital account and shall be treated as paid in the period to which so allocable.

(2) Exception

This subsection shall not apply to points paid in respect of any indebtedness incurred in connection with the purchase or improvement of, and secured by, the principal residence of the taxpayer to the extent that, under regulations prescribed by the Secretary, such payment of points is an established business practice in the area in which such indebtedness is incurred, and the amount of such payment does not exceed the amount generally charged in such area.

(h) Certain liabilities not incurred before economic performance**(1) In general**

For purposes of this title, in determining whether an amount has been incurred with respect to any item during any taxable year, the all events test shall not be treated as met any earlier than when economic performance with respect to such item occurs.

(2) Time when economic performance occurs

Except as provided in regulations prescribed by the Secretary, the time when economic performance occurs shall be determined under the following principles:

(A) Services and property provided to the taxpayer

If the liability of the taxpayer arises out of—

- (i) the providing of services to the taxpayer by another person, economic performance occurs as such person provides such services,
- (ii) the providing of property to the taxpayer by another person, economic performance occurs as the person provides such property, or
- (iii) the use of property by the taxpayer, economic performance occurs as the taxpayer uses such property.

(B) Services and property provided by the taxpayer

If the liability of the taxpayer requires the taxpayer to provide property or services, economic performance occurs as the taxpayer provides such property or services.

(C) Workers compensation and tort liabilities of the taxpayer

If the liability of the taxpayer requires a payment to another person and—

- (i) arises under any workers compensation act, or
- (ii) arises out of any tort,

economic performance occurs as the payments to such person are made. Subparagraphs (A) and (B) shall not apply to any liability described in the preceding sentence.

(D) Other items

In the case of any other liability of the taxpayer, economic performance occurs at the time determined under regulations prescribed by the Secretary.

(3) Exception for certain recurring items**(A) In general**

Notwithstanding paragraph (1) an item shall be treated as incurred during any taxable year if—

- (i) the all events test with respect to such item is met during such taxable year (determined without regard to paragraph (1)),
- (ii) economic performance with respect to such item occurs within the shorter of—
 - (I) a reasonable period after the close of such taxable year, or
 - (II) 8½ months after the close of such taxable year,
- (iii) such item is recurring in nature and the taxpayer consistently treats items of such kind as incurred in the taxable year in which the requirements of clause (i) are met, and
- (iv) either—
 - (I) such item is not a material item, or
 - (II) the accrual of such item in the taxable year in which the requirements of

clause (i) are met results in a more proper match against income than accruing such item in the taxable year in which economic performance occurs.

(B) Financial statements considered under subparagraph (A)(iv)

In making a determination under subparagraph (A)(iv), the treatment of such item on financial statements shall be taken into account.

(C) Paragraph not to apply to workers compensation and tort liabilities

This paragraph shall not apply to any item described in subparagraph (C) of paragraph (2).

(4) All events test

For purposes of this subsection, the all events test is met with respect to any item if all events have occurred which determine the fact of liability and the amount of such liability can be determined with reasonable accuracy.

(5) Subsection not to apply to certain items

This subsection shall not apply to any item for which a deduction is allowable under a provision of this title which specifically provides for a deduction for a reserve for estimated expenses.

(i) Special rules for tax shelters**(1) Recurring item exception not to apply**

In the case of a tax shelter, economic performance shall be determined without regard to paragraph (3) of subsection (h).

(2) Special rule for spudding of oil or gas wells**(A) In general**

In the case of a tax shelter, economic performance with respect to amounts paid during the taxable year for drilling an oil or gas well shall be treated as having occurred within a taxable year if drilling of the well commences before the close of the 90th day after the close of the taxable year.

(B) Deduction limited to cash basis**(i) Tax shelter partnerships**

In the case of a tax shelter which is a partnership, in applying section 704(d) to a deduction or loss for any taxable year attributable to an item which is deductible by reason of subparagraph (A), the term “cash basis” shall be substituted for the term “adjusted basis”.

(ii) Other tax shelters

Under regulations prescribed by the Secretary, in the case of a tax shelter other than a partnership, the aggregate amount of the deductions allowable by reason of subparagraph (A) for any taxable year shall be limited in a manner similar to the limitation under clause (i).

(C) Cash basis defined

For purposes of subparagraph (B), a partner's cash basis in a partnership shall be equal to the adjusted basis of such partner's interest in the partnership, determined without regard to—

- (i) any liability of the partnership, and
- (ii) any amount borrowed by the partner with respect to such partnership which—

(I) was arranged by the partnership or by any person who participated in the organization, sale, or management of the partnership (or any person related to such person within the meaning of section 465(b)(3)(C)), or

(II) was secured by any asset of the partnership.

(3) Tax shelter defined

For purposes of this subsection, the term “tax shelter” means—

(A) any enterprise (other than a C corporation) if at any time interests in such enterprise have been offered for sale in any offering required to be registered with any Federal or State agency having the authority to regulate the offering of securities for sale,

(B) any syndicate (within the meaning of section 1256(e)(3)(B)), and

(C) any tax shelter (as defined in section 6662(d)(2)(C)(ii)).

(4) Special rules for farming

In the case of the trade or business of farming (as defined in section 464(e)), in determining whether an entity is a tax shelter, the definition of farming syndicate in subsection (k) shall be substituted for subparagraphs (A) and (B) of paragraph (3).

(5) Economic performance

For purposes of this subsection, the term “economic performance” has the meaning given such term by subsection (h).

(j) Limitation on excess farm losses of certain taxpayers

(1) Limitation

If a taxpayer other than a C corporation receives any applicable subsidy for any taxable year, any excess farm loss of the taxpayer for the taxable year shall not be allowed.

(2) Disallowed loss carried to next taxable year

Any loss which is disallowed under paragraph (1) shall be treated as a deduction of the taxpayer attributable to farming businesses in the next taxable year.

(3) Applicable subsidy

For purposes of this subsection, the term “applicable subsidy” means—

(A) any direct or counter-cyclical payment under title I of the Food, Conservation, and Energy Act of 2008, or any payment elected to be received in lieu of any such payment, or

(B) any Commodity Credit Corporation loan.

(4) Excess farm loss

For purposes of this subsection—

(A) In general

The term “excess farm loss” means the excess of—

- (i) the aggregate deductions of the taxpayer for the taxable year which are attributable to farming businesses of such

taxpayer (determined without regard to whether or not such deductions are disallowed for such taxable year under paragraph (1)), over

- (ii) the sum of—

(I) the aggregate gross income or gain of such taxpayer for the taxable year which is attributable to such farming businesses, plus

(II) the threshold amount for the taxable year.

(B) Threshold amount

(i) In general

The term “threshold amount” means, with respect to any taxable year, the greater of—

(I) \$300,000 (\$150,000 in the case of married individuals filing separately), or

(II) the excess (if any) of the aggregate amounts described in subparagraph (A)(ii)(I) for the 5-consecutive taxable year period preceding the taxable year over the aggregate amounts described in subparagraph (A)(i) for such period.

(ii) Special rules for determining aggregate amounts

For purposes of clause (i)(II)—

(I) notwithstanding the disregard in subparagraph (A)(i) of any disallowance under paragraph (1), in the case of any loss which is carried forward under paragraph (2) from any taxable year, such loss (or any portion thereof) shall be taken into account for the first taxable year in which a deduction for such loss (or portion) is not disallowed by reason of this subsection, and

(II) the Secretary shall prescribe rules for the computation of the aggregate amounts described in such clause in cases where the filing status of the taxpayer is not the same for the taxable year and each of the taxable years in the period described in such clause.

(C) Farming business

(i) In general

The term “farming business” has the meaning given such term in section 263A(e)(4).

(ii) Certain trades and businesses included

If, without regard to this clause, a taxpayer is engaged in a farming business with respect to any agricultural or horticultural commodity—

(I) the term “farming business” shall include any trade or business of the taxpayer of the processing of such commodity (without regard to whether the processing is incidental to the growing, raising, or harvesting of such commodity), and

(II) if the taxpayer is a member of a cooperative to which subchapter T applies, any trade or business of the cooperative described in subclause (I) shall be treated as the trade or business of the taxpayer.

(D) Certain losses disregarded

For purposes of subparagraph (A)(i), there shall not be taken into account any deduc-

tion for any loss arising by reason of fire, storm, or other casualty, or by reason of disease or drought, involving any farming business.

(5) Application of subsection in case of partnerships and S corporations

In the case of a partnership or S corporation—

(A) this subsection shall be applied at the partner or shareholder level, and

(B) each partner's or shareholder's proportionate share of the items of income, gain, or deduction of the partnership or S corporation for any taxable year from farming businesses attributable to the partnership or S corporation, and of any applicable subsidies received by the partnership or S corporation during the taxable year, shall be taken into account by the partner or shareholder in applying this subsection to the taxable year of such partner or shareholder with or within which the taxable year of the partnership or S corporation ends.

The Secretary may provide rules for the application of this paragraph to any other pass-thru entity to the extent necessary to carry out the provisions of this subsection.

(6) Additional reporting

The Secretary may prescribe such additional reporting requirements as the Secretary determines appropriate to carry out the purposes of this subsection.

(7) Coordination with section 469

This subsection shall be applied before the application of section 469.

(k) Farming syndicate defined

(1) In general

For purposes of subsection (i)(4), the term “farming syndicate” means—

(A) a partnership or any other enterprise other than a corporation which is not an S corporation engaged in the trade or business of farming, if at any time interests in such partnership or enterprise have been offered for sale in any offering required to be registered with any Federal or State agency having authority to regulate the offering of securities for sale, or

(B) a partnership or any other enterprise other than a corporation which is not an S corporation engaged in the trade or business of farming, if more than 35 percent of the losses during any period are allocable to limited partners or limited entrepreneurs.

(2) Holdings attributable to active management

For purposes of paragraph (1)(B), the following shall be treated as an interest which is not held by a limited partner or a limited entrepreneur:

(A) in the case of any individual who has actively participated (for a period of not less than 5 years) in the management of any trade or business of farming, any interest in a partnership or other enterprise which is attributable to such active participation,

(B) in the case of any individual whose principal residence is on a farm, any part-

nership or other enterprise engaged in the trade or business of farming such farm,

(C) in the case of any individual who is actively participating in the management of any trade or business of farming or who is an individual who is described in subparagraph (A) or (B), any participation in the further processing of livestock which was raised in such trade or business (or in the trade or business referred to in subparagraph (A) or (B)),

(D) in the case of an individual whose principal business activity involves active participation in the management of a trade or business of farming, any interest in any other trade or business of farming, and,

(E) any interest held by a member of the family (or a spouse of any such member) of a grandparent of an individual described in subparagraph (A), (B), (C), or (D) if the interest in the partnership or the enterprise is attributable to the active participation of the individual described in subparagraph (A), (B), (C), or (D).

For purposes of subparagraph (A), where one farm is substituted for or added to another farm, both farms shall be treated as one farm. For purposes of subparagraph (E), the term “family” has the meaning given to such term by section 267(c)(4).

(3) Farming

For purposes of this subsection, the term “farming” has the meaning given to such term by section 464(e).

(4) Limited entrepreneur

For purposes of this subsection, the term “limited entrepreneur” means a person who—

(A) has an interest in an enterprise other than as a limited partner, and

(B) does not actively participate in the management of such enterprise.

(l) Limitation on excess business losses of non-corporate taxpayers

(1) Limitation

In the case of a taxpayer other than a corporation—

(A) for any taxable year beginning after December 31, 2017, and before January 1, 2026, subsection (j) (relating to limitation on excess farm losses of certain taxpayers) shall not apply, and

(B) for any taxable year beginning after December 31, 2020, and before January 1, 2026, any excess business loss of the taxpayer for the taxable year shall not be allowed.

(2) Disallowed loss carryover

Any loss which is disallowed under paragraph (1) shall be treated as a net operating loss for the taxable year for purposes of determining any net operating loss carryover under section 172(b) for subsequent taxable years.

(3) Excess business loss

For purposes of this subsection—

(A) In general

The term “excess business loss” means the excess (if any) of—

(i) the aggregate deductions of the taxpayer for the taxable year which are attributable to trades or businesses of such taxpayer (determined without regard to whether or not such deductions are disallowed for such taxable year under paragraph (1) and without regard to any deduction allowable under section 172 or 199A), over

(ii) the sum of—

(I) the aggregate gross income or gain of such taxpayer for the taxable year which is attributable to such trades or businesses, plus

(II) \$250,000 (200 percent of such amount in the case of a joint return).

Such excess shall be determined without regard to any deductions, gross income, or gains attributable to any trade or business of performing services as an employee.

(B) Treatment of capital gains and losses

(i) Losses

Deductions for losses from sales or exchanges of capital assets shall not be taken into account under subparagraph (A)(i).

(ii) Gains

The amount of gains from sales or exchanges of capital assets taken into account under subparagraph (A)(ii) shall not exceed the lesser of—

(I) the capital gain net income determined by taking into account only gains and losses attributable to a trade or business, or

(II) the capital gain net income.

(C) Adjustment for inflation

In the case of any taxable year beginning after December 31, 2018, the \$250,000 amount in subparagraph (A)(ii)(II) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting “2017” for “2016” in subparagraph (A)(ii) thereof.

If any amount as increased under the preceding sentence is not a multiple of \$1,000, such amount shall be rounded to the nearest multiple of \$1,000.

(4) Application of subsection in case of partnerships and S corporations

In the case of a partnership or S corporation—

(A) this subsection shall be applied at the partner or shareholder level, and

(B) each partner’s or shareholder’s allocable share of the items of income, gain, deduction, or loss of the partnership or S corporation for any taxable year from trades or businesses attributable to the partnership or S corporation shall be taken into account by the partner or shareholder in applying this subsection to the taxable year of such partner or shareholder with or within which the taxable year of the partnership or S corporation ends.

For purposes of this paragraph, in the case of an S corporation, an allocable share shall be the shareholder’s pro rata share of an item.

(5) Additional reporting

The Secretary shall prescribe such additional reporting requirements as the Secretary determines necessary to carry out the purposes of this subsection.

(6) Coordination with section 469

This subsection shall be applied after the application of section 469.

(Aug. 16, 1954, ch. 736, 68A Stat. 157; Pub. L. 86–781, §6(a), Sept. 14, 1960, 74 Stat. 1020; Pub. L. 87–876, §3(a), Oct. 24, 1962, 76 Stat. 1199; Pub. L. 88–272, title II, §223(a)(1), Feb. 26, 1964, 78 Stat. 76; Pub. L. 94–455, title II, §208(a), title XIX, §§1901(a)(69), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1541, 1775, 1834; Pub. L. 98–369, div. A, title I, §91(a), (e), July 18, 1984, 98 Stat. 598, 607; Pub. L. 99–514, title VIII, §§801(b), 805(c)(5), 823(b)(1), title XVIII, §1807(a)(1), (2), Oct. 22, 1986, 100 Stat. 2347, 2362, 2374, 2811; Pub. L. 100–203, title X, §10201(b)(5), Dec. 22, 1987, 101 Stat. 1330–387; Pub. L. 100–647, title I, §§1008(a)(3), 1018(u)(5), Nov. 10, 1988, 102 Stat. 3436, 3590; Pub. L. 101–239, title VII, §7721(c)(10), Dec. 19, 1989, 103 Stat. 2400; Pub. L. 101–508, title XI, §11704(a)(5), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 104–188, title I, §1704(t)(24), (78), Aug. 20, 1996, 110 Stat. 1888, 1891; Pub. L. 109–135, title IV, §412(aa), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 110–234, title XV, §15351(a), May 22, 2008, 122 Stat. 1523; Pub. L. 110–246, §4(a), title XV, §15351(a), June 18, 2008, 122 Stat. 1664, 2285; Pub. L. 113–295, div. A, title II, §221(a)(58)(B), Dec. 19, 2014, 128 Stat. 4047; Pub. L. 115–97, title I, §11012(a), Dec. 22, 2017, 131 Stat. 2071; Pub. L. 115–141, div. U, title IV, §401(a)(117), Mar. 23, 2018, 132 Stat. 1190; Pub. L. 116–136, div. A, title II, §2304(a), (b), Mar. 27, 2020, 134 Stat. 356; Pub. L. 117–2, title IX, §9041(a), Mar. 11, 2021, 135 Stat. 122; Pub. L. 117–169, title I, §13903(b)(1), Aug. 16, 2022, 136 Stat. 2014.)

AMENDMENT OF SUBSECTION (1)(1)

Pub. L. 117–169, title I, §13903(b), Aug. 16, 2022, 136 Stat. 2014, provided that, applicable to taxable years beginning after Dec. 31, 2026, subsection (1)(1) of this section is amended by striking “January 1, 2027” each place it appears and inserting “January 1, 2029”. See 2022 Amendment note below.

Pub. L. 117–2, title IX, §9041, Mar. 11, 2021, 135 Stat. 122, provided that, applicable to taxable years beginning after December 31, 2025, subsection (1)(1) of this section is amended by striking “January 1, 2026” each place it appears and inserting “January 1, 2027”. See 2021 Amendment note below.

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

Editorial Notes

REFERENCES IN TEXT

The Food, Conservation, and Energy Act of 2008, referred to in subsec. (j)(3)(A), is Pub. L. 110–246, June 18, 2008, 122 Stat. 1651. Title I of the Act is classified prin-

cipally to chapter 113 (§8701 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 8701 of Title 7 and Tables.

CODIFICATION

Subsec. (c) of section 464 of this title, which was transferred to this section and redesignated subsec. (j) by Pub. L. 113-295, §221(a)(58)(B)(i), was based on Pub. L. 94-455, title II, §207(a)(1), Oct. 4, 1976, 90 Stat. 1536.

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2022—Subsec. (l)(1). Pub. L. 117-169 substituted “January 1, 2029” for “January 1, 2027” in two places.

2021—Subsec. (l)(1). Pub. L. 117-2 substituted “January 1, 2027” for “January 1, 2026” in two places.

2020—Subsec. (l)(1). Pub. L. 116-136, §2304(a), amended par. (1) generally. Prior to amendment, text read as follows: “In the case of taxable year of a taxpayer other than a corporation beginning after December 31, 2017, and before January 1, 2026—

“(A) subsection (j) (relating to limitation on excess farm losses of certain taxpayers) shall not apply, and

“(B) any excess business loss of the taxpayer for the taxable year shall not be allowed.”

Subsec. (l)(2). Pub. L. 116-136, §2304(b)(1), substituted “a net operating loss for the taxable year for purposes of determining any net operating loss carryover under section 172(b) for subsequent taxable years” for “a net operating loss carryover to the following taxable year under section 172”.

Subsec. (l)(3)(A). Pub. L. 116-136, §2304(b)(2)(B), inserted concluding provisions.

Subsec. (l)(3)(A)(i). Pub. L. 116-136, §2304(b)(2)(A), inserted “and without regard to any deduction allowable under section 172 or 199A” after “under paragraph (1)”.

Subsec. (l)(3)(B), (C). Pub. L. 116-136, §2304(b)(3), added subpar. (B) and redesignated former subpar. (B) as (C).

2018—Subsec. (i)(4). Pub. L. 115-141, §401(a)(117)(B), substituted “subsection (k)” for “subsection (j)”.

Subsecs. (j), (k). Pub. L. 115-141, §401(a)(117)(A), redesignated subsec. (j) relating to farming syndicate defined as (k).

2017—Subsec. (l). Pub. L. 115-97 added subsec. (l).

2014—Subsec. (i)(4). Pub. L. 113-295, §221(a)(58)(B)(iii), substituted “subsection (j)” for “section 464(c)”.

Subsec. (j). Pub. L. 113-295, §221(a)(58)(B)(i), transferred subsec. (c) of section 464 of this title, relating to farming syndicate defined, to the end of this section and redesignated it as subsec. (j).

Subsec. (j)(1). Pub. L. 113-295, §221(a)(58)(B)(ii)(I), substituted “For purposes of subsection (i)(4)” for “For purposes of this section” in introductory provisions.

Subsec. (j)(3), (4). Pub. L. 113-295, §221(a)(58)(B)(ii)(II), added pars. (3) and (4).

2008—Subsec. (j). Pub. L. 110-246, §15351(a), added subsec. (j) relating to limitation on excess farm losses of certain taxpayers.

2005—Subsec. (i)(3)(C). Pub. L. 109-135 substituted “section 6662(d)(2)(C)(ii)” for “section 6662(d)(2)(C)(iii)”.

1996—Subsec. (i)(3)(C). Pub. L. 104-188, §1704(t)(78), substituted “section 6662(d)(2)(C)(iii)” for “section 6662(d)(2)(C)(ii)”.

Pub. L. 104-188, §1704(t)(24), amended directory language of Pub. L. 101-239. See 1989 Amendment note below.

1990—Subsec. (i)(3)(C). Pub. L. 101-508 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “any tax shelter (within the meaning of section 6662(d)(2)(C)(ii)).”

1989—Subsec. (i)(3)(C). Pub. L. 101-239, as amended by Pub. L. 104-188, §1704(t)(24), substituted “section 6662(d)(2)(C)(ii)” for “section 6661(b)(2)(C)(ii)”.

1988—Subsec. (h)(5)(B), (C). Pub. L. 100-647, §1018(u)(5), amended Pub. L. 99-514, §823(b)(1). See 1986 Amendment note below.

Subsec. (i)(2). Pub. L. 100-647, §1008(a)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “In the case of a tax shelter, economic performance with respect to the act of drilling an oil or gas well shall be treated as having occurred within a taxable year if drilling of the well commences before the close of the 90th day after the close of the taxable year.”

1987—Subsec. (h)(5). Pub. L. 100-203 substituted “items” for “cases to which other provisions of this title specifically apply” in heading and amended text generally. Prior to amendment, text read as follows: “This subsection shall not apply to any item to which any of the following provisions apply:

“(A) Section 463 (relating to vacation pay).

“(B) Any other provisions of this title which specifically provides for a deduction for a reserve for estimated expenses.”

1986—Subsec. (h)(5)(A). Pub. L. 99-514, §805(c)(5), redesignated subpar. (B) as (A) and struck out former subpar. (A) which referred to subsec. (c) or (f) of section 166.

Subsec. (h)(5)(B). Pub. L. 99-514, §823(b)(1), as amended by Pub. L. 100-647, §1018(u)(5), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: “Section 466 (relating to discount coupons).”

Pub. L. 99-514, §805(c)(5), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Subsec. (h)(5)(C). Pub. L. 99-514, §823(b)(1), as amended by Pub. L. 100-647, §1018(u)(5), redesignated subpar. (C) as (B).

Pub. L. 99-514, §805(c)(5), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Subsec. (h)(5)(D). Pub. L. 99-514, §805(c)(5), redesignated subpar. (D) as (C).

Subsec. (i). Pub. L. 99-514, §801(b)(1), substituted “Special rules for tax shelters” for “Tax shelters may not deduct items earlier than when economic performance occurs” in heading.

Subsec. (i)(1). Pub. L. 99-514, §801(b)(1), substituted “Recurring item exception not to apply” for “In general” in heading and amended par. (1) generally. Prior to amendment, par. (1) read as follows: “In the case of a tax shelter computing taxable income under the cash receipts and disbursements method of accounting, such tax shelter shall not be allowed a deduction under this chapter with respect to any item any earlier than the time when such item would be treated as incurred under subsection (h) (determined without regard to paragraph (3) thereof).”

Subsec. (i)(2). Pub. L. 99-514, §801(b)(1), amended par. (2) generally, substituting provisions relating to special rule for spudding of oil or gas wells for former provisions consisting of subpars. (A) to (D) which related to deduction of items when economic performance occurs on or before 90th day after close of the taxable year to the extent of cash basis.

Pub. L. 99-514, §1807(a)(1), substituted “on or before the 90th day” for “within 90 days” in heading and substituted “before the close of the 90th day after the close of the taxable year” for “within 90 days after the close of the taxable year” in subpar. (A).

Subsec. (i)(4). Pub. L. 99-514, §801(b)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “In the case of the trade or business of farming (as defined in section 464(e))—

“(A) any tax shelter described in paragraph (3)(C) shall be treated as a farming syndicate for purposes of section 464; except that this subparagraph shall not apply for purposes of determining the income of an individual meeting the requirements of section 464(c)(2),

“(B) section 464 shall be applied before this subsection, and

“(C) in determining whether an entity is a tax shelter, the definition of farming syndicate in section 464(c) shall be substituted for subparagraphs (A) and (B) of paragraph (3).”

Subsec. (i)(4)(A). Pub. L. 99-514, §1807(a)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A)

read as follows: “section 464 shall be applied to any tax shelter described in paragraph (3)(C).”.

1984—Subsec. (f)(4). Pub. L. 98-369, §91(e), inserted “determined after application of subsection (h)”.

Subsecs. (h), (i). Pub. L. 98-369, §91(a), added subsecs. (h) and (i).

1976—Subsec. (c)(2), (3). Pub. L. 94-455, §§1901(a)(69)(A), (B), 1906(b)(13)(A), redesignated par. (3) as (2), substituted “in which he” for “which begins after December 31, 1953, and ends after the date of the enactment of this title in which the taxpayer”, and struck out “or his delegate” after “Secretary” wherever appearing. Former par. (2), which related to special limitations on the applicability of par. (1), was struck out.

Subsecs. (d), (e). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing.

Subsec. (g). Pub. L. 94-455, §208(a), added subsec. (g).

1964—Subsec. (f). Pub. L. 88-272 added subsec. (f).

1962—Subsec. (e). Pub. L. 87-876 added subsec. (e).

1960—Subsec. (d). Pub. L. 86-781 added subsec. (d).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Pub. L. 117-169, title I, §13903(b)(2), Aug. 16, 2022, 136 Stat. 2014, provided that: “The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 2026.”

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 117-2, title IX, §9041(b), Mar. 11, 2021, 135 Stat. 122, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2025.”

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-136, div. A, title II, §2304(c), Mar. 27, 2020, 134 Stat. 356, provided that:

“(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2017.

“(2) TECHNICAL AMENDMENTS.—The amendments made by subsection (b) [amending this section] shall take effect as if included in the provisions of Public Law 115-97 to which they relate.”

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-97, title I, §11012(b), Dec. 22, 2017, 131 Stat. 2072, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.”

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110-234, title XV, §15351(b), May 22, 2008, 122 Stat. 1525, and Pub. L. 110-246, §4(a), title XV, §15351(b), June 18, 2008, 122 Stat. 1664, 2287, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VII, §7721(d), Dec. 19, 1989, 103 Stat. 2400, provided that: “The amendments made by

this section [enacting sections 6662 to 6665 of this title, amending this section and sections 1274, 5684, 5761, 6013, 6222, 6601, 6621, 6653, 6672, and 7519 of this title, and repealing sections 6659, 6659A, 6660, 6661, and former section 6662 of this title] shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1989.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to taxable years beginning after Dec. 31, 1987, see section 10201(c)(1) of Pub. L. 100-203, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 801(b) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 801(d) of Pub. L. 99-514, set out as an Effective Date note under section 448 of this title.

Amendment by section 805(c)(5) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain changes required in method of accounting, see section 805(d) of Pub. L. 99-514, set out as a note under section 166 of this title.

Amendment by section 823 of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with changes required in the method of accounting, see section 823(c) of Pub. L. 99-514, set out as an Effective Date of Repeal note under section 466 of this title.

Amendment by section 1807(a)(1), (2) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, §91(g)-(i), July 18, 1984, 98 Stat. 608, 609, as amended by Pub. L. 99-514, §2, title XVIII, §1807(a)(3)(B), (4)(F), (5), (6), Oct. 22, 1986, 100 Stat. 2095, 2811, 2813, 2814, provided that:

“(g) EFFECTIVE DATES.—

“(1) IN GENERAL.—Except as provided in this subsection and subsections (h) and (i), the amendments made by this section [enacting sections 88, 468, and 468A of this title and amending this section and section 172 of this title] shall apply to amounts with respect to which a deduction would be allowable under chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (determined without regard to such amendments) after—

“(A) in the case of amounts to which section 461(h) of such Code (as added by such amendments) applies, the date of the enactment of this Act [July 18, 1984], and

“(B) in the case of amounts to which section 461(i) of such Code (as so added) applies, after March 31, 1984.

“(2) TAXPAYER MAY ELECT EARLIER APPLICATION.—

“(A) IN GENERAL.—In the case of amounts described in paragraph (1)(A), a taxpayer may elect to have the amendments made by this section apply to amounts which—

“(i) are incurred on or before the date of the enactment of this Act [July 18, 1984] (determined without regard to such amendments), and

“(ii) are incurred after the date of the enactment of this Act (determined with regard to such amendments).

The Secretary of the Treasury or his delegate may by regulations provide that (in lieu of an election

under the preceding sentence) a taxpayer may (subject to such conditions as such regulations may provide) elect to have subsection (h) of section 461 of such Code apply to the taxpayer's entire taxable year in which occurs July 19, 1984.

“(B) ELECTION TREATED AS CHANGE IN THE METHOD OF ACCOUNTING.—For purposes of section 481 of the Internal Revenue Code of 1986, if an election is made under subparagraph (A) with respect to any amount, the application of the amendments made by this section shall be treated as a change in method of accounting—

“(i) initiated by the taxpayer,

“(ii) made with the consent of the Secretary of the Treasury, and

“(iii) with respect to which section 481 of such Code shall be applied by substituting a 3-year adjustment period for a 10-year adjustment period.

“(3) SECTION 461(h) TO APPLY IN CERTAIN CASES.—Notwithstanding paragraph (1), section 461(h) of the Internal Revenue Code of 1986 (as added by this section) shall be treated as being in effect to the extent necessary to carry out any amendments made by this section which take effect before section 461(h).

“(4) EFFECTIVE DATE FOR TREATMENT OF MINING AND SOLID WASTE RECLAMATION AND CLOSING COSTS.—Except as otherwise provided in subsection (h), the amendments made by subsection (b) [enacting section 468 of this title] shall take effect on the date of the enactment of this Act [July 18, 1984] with respect to taxable years ending after such date.

“(5) RULES FOR NUCLEAR DECOMMISSIONING COSTS.—The amendments made by subsections (c) and (f) [enacting sections 88 and 468A of this title] shall take effect on the date of the enactment of this Act [July 18, 1984] with respect to taxable years ending after such date.

“(6) MODIFICATION OF NET OPERATING LOSS CARRYBACK PERIOD.—The amendments made by subsection (d) [amending section 172 of this title] shall apply to losses for taxable years beginning after December 31, 1983.

“(h) EXCEPTION FOR CERTAIN EXISTING ACTIVITIES AND CONTRACTS.—If—

“(1) EXISTING ACCOUNTING PRACTICES.—If, on March 1, 1984, any taxpayer was regularly computing his deduction for mining reclamation activities under a current cost method of accounting (as determined by the Secretary of the Treasury or his delegate), the liability for reclamation activities—

“(A) for land disturbed before the date of the enactment of this Act [July 18, 1984], or

“(B) to which paragraph (2) applies,

shall be treated as having been incurred when the land was disturbed.

“(2) FIXED PRICE SUPPLY CONTRACT.—

“(A) IN GENERAL.—In the case of any fixed price supply contract entered into before March 1, 1984, the amendments made by subsection (b) [enacting section 468 of this title] shall not apply to any minerals extracted from such property which are sold pursuant to such contract.

“(B) NO EXTENSION OR RENEGOTIATION.—Subparagraph (A) shall not apply—

“(i) to any extension of any contract beyond the period such contract was in effect on March 1, 1984, or

“(ii) to any renegotiation of, or other change in, the terms and conditions of such contract in effect on March 1, 1984.

“(i) TRANSITIONAL RULE FOR ACCRUED VACATION PAY.—

“(1) IN GENERAL.—In the case of any taxpayer—

“(A) with respect to whom a deduction was allowable (other than under section 463 of the Internal Revenue Code of 1986) for vested accrued vacation pay for the last taxable year ending before the date of the enactment of this Act [July 18, 1984], and

“(B) who elects the application of section 463 of such Code for the first taxable year ending after the date of the enactment of this Act,

then, for purposes of section 463(b) of such Code, the opening balance of the taxpayer with respect to any vested accrued vacation pay shall be determined under section 463(b)(1) of such Code.

“(2) VESTED ACCRUED VACATION PAY.—For purposes of this subsection, the term ‘vested accrued vacation pay’ means any amount allowable under section 162(a) of such Code with respect to vacation pay of employees of the taxpayer (determined without regard to section 463 of such Code).”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(69) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Pub. L. 94-455, title II, §208(b), Oct. 4, 1976, 90 Stat. 1542, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to amounts paid after December 31, 1975, in taxable years ending after such date.

“(2) CERTAIN AMOUNTS PAID BEFORE 1977.—The amendment made by subsection (a) [amending this section] shall not apply to amounts paid before January 1, 1977, pursuant to a binding contract or written loan commitment which existed on September 16, 1975 (and at all times thereafter), and which required prepayment of such amounts by the taxpayer.”

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88-272, title II, §223(b), Feb. 26, 1964, 78 Stat. 76, provided that: “Except as provided in subsections (c) and (d) [set out below]—

“(1) the amendment made by subsection (a)(1) [amending this section] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954, and

“(2) the amendment made by subsection (a)(2) [amending section 43 of the Internal Revenue Code of 1939] shall apply to taxable years to which the Internal Revenue Code of 1939 applies.”

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87-876, §3(b), Oct. 24, 1962, 76 Stat. 1199, provided that: “The amendment made by subsection (a) [amending this section] shall apply only with respect to taxable years ending after December 31, 1962.”

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86-781, §6(b), Sept. 14, 1960, 74 Stat. 1021, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1960.”

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE FOR CERTAIN AMOUNTS

Pub. L. 99-514, title XVIII, §1807(a)(8), Oct. 22, 1986, 100 Stat. 2816, provided that: “For purposes of section 461(h) of the Internal Revenue Code of 1954 [now 1986], economic performance shall be treated as occurring on the date of a payment to an insurance company if—

“(A) such payment was made before November 23, 1985, for indemnification against a tort liability relating to personal injury or death caused by inhalation or ingestion of dust from asbestos-containing insulation products,

“(B) such insurance company is unrelated to taxpayer,
 “(C) such payment is not refundable, and
 “(D) the taxpayer is not engaged in the mining of asbestos nor is any member of any affiliated group which includes the taxpayer so engaged.”

TRANSITION RULE

Pub. L. 99-514, title XVIII, §1807(c), Oct. 22, 1986, 100 Stat. 2817, provided that: “A taxpayer shall be allowed to use the cash receipts and disbursements method of accounting for taxable years ending after January 1, 1982, if such taxpayer—

- “(1) is a partnership which was founded in 1936,
- “(2) has over 1,000 professional employees,
- “(3) used a long-term contract method of accounting for a substantial part of its income from the performance of architectural and engineering services, and
- “(4) is headquartered in Chicago, Illinois.”

ELECTION AS TO TRANSFERS IN TAXABLE YEARS BEGINNING BEFORE JAN. 1, 1964

Pub. L. 88-272, title II, §223(c), Feb. 26, 1964, 78 Stat. 76, provided that:

“(1) The amendments made by subsection (a) [amending this section and section 43 of the Internal Revenue Code of 1939] shall not apply to any transfer of money or other property described in subsection (a) made in a taxable year beginning before January 1, 1964, if the taxpayer elects, in the manner provided by regulations prescribed by the Secretary of the Treasury or his delegate, to have this paragraph apply. Such an election—

- “(A) must be made within one year after the date of the enactment of this Act [Feb. 26, 1964],
- “(B) may not be revoked after the expiration of such one-year period, and
- “(C) shall apply to all transfers described in the first sentence of this paragraph (other than transfers described in paragraph (2)).

In the case of any transfer to which this paragraph applies, the deduction shall be allowed only for the taxable year in which the contest with respect to such transfer is settled.

“(2) Paragraph (1) shall not apply to any transfer if the assessment of any deficiency which would result from the application of the election in respect of such transfer is, on the date of the election under paragraph (1), prevented by the operation of any law or rule of law.

“(3) If the taxpayer makes an election under paragraph (1), and if, on the date of such election, the assessment of any deficiency which results from the application of the election in respect of any transfer is not prevented by the operation of any law or rule of law, the period within which assessment of such deficiency may be made shall not expire earlier than 2 years after the date of the enactment of this Act [Feb. 26, 1964].”

CERTAIN OTHER TRANSFERS IN TAXABLE YEARS BEGINNING BEFORE JAN. 1, 1964

Pub. L. 88-272, title II, §223(d), Feb. 26, 1964, 78 Stat. 77, provided that: “The amendments made by subsection (a) [amending this section and section 43 of the Internal Revenue Code of 1939] shall not apply to any transfer of money or other property described in subsection (a) made in a taxable year beginning before January 1, 1964, if—

- “(1) no deduction has been allowed in respect of such transfer for any taxable year before the taxable year in which the contest with respect to such transfer is settled, and
- “(2) refund or credit of any overpayment which would result from the application of such amendments to such transfer is prevented by the operation of any law or rule of law.

In the case of any transfer to which this subsection applies, the deduction shall be allowed for the taxable

year in which the contest with respect to such transfer is settled.”

[§ 462. Repealed. June 15, 1955, ch. 143, § 1(b), 69 Stat. 134]

Section, act Aug. 16, 1954, ch. 736 68A Stat. 158, related to reserves for estimated expenses.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 3 of Act June 15, 1955, set out as an Effective Date of 1955 Amendment note under section 381 of this title.

SAVINGS PROVISION

For provisions concerning increase in tax in any taxable year ending on or before June 15, 1955 by reason of enactment of act June 15, 1955, see section 4 of act June 15, 1955, set out as a note under section 381 of this title.

[§ 463. Repealed. Pub. L. 100-203, title X, § 10201(a), Dec. 22, 1987, 101 Stat. 1330-387]

Section, added Pub. L. 93-625, §4(a), Jan. 3, 1974, 88 Stat. 2109; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title V, §561(a), July 18, 1984, 98 Stat. 901; Pub. L. 99-514, title XI, §1165(a), Oct. 22, 1986, 100 Stat. 2511, related to deduction allowable for accrual basis taxpayers under section 162(a) of this title with respect to vacation pay.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1987, see section 10201(c)(1) of Pub. L. 100-203, set out as an Effective Date of 1987 Amendment note under section 404 of this title.

CHANGE IN METHOD OF ACCOUNTING REQUIRED BY PUB. L. 100-203

Pub. L. 100-203, title X, §10201(c)(2), Dec. 22, 1987, 101 Stat. 1330-388, provided that: “In the case of any taxpayer who elected to have section 463 of the Internal Revenue Code of 1986 apply for such taxpayer’s last taxable year beginning before January 1, 1988, and who is required to change his method of accounting by reason of the amendments made by this section [amending sections 404, 419, and 461 of this title, repealing sections 81 and 463 of this title, and enacting provisions set out as a note under section 404 of this title]—

- “(A) such change shall be treated as initiated by the taxpayer,
- “(B) such change shall be treated as having been made with the consent of the Secretary, and
- “(C) the net amount of adjustments required by section 481 of such Code to be taken into account by the taxpayer—

“(i) shall be reduced by the balance in the suspense account under section 463(c) of such Code as of the close of such last taxable year, and

“(ii) shall be taken into account over the 4-taxable year period beginning with the taxable year following such last taxable year as follows:

“In the case of the:	The percentage taken into account is:
1st year	25
2nd year	5
3rd year	35
4th year	35.

Notwithstanding subparagraph (C)(ii), if the period the adjustments are required to be taken into ac-