

102 Stat. 3437; Pub. L. 105-34, title III, §312(d)(1), Aug. 5, 1997, 111 Stat. 839; Pub. L. 113-295, div. A, title II, §221(a)(58)(A), (B)(i), (C), (D), Dec. 19, 2014, 128 Stat. 4047; Pub. L. 115-141, div. U, title IV, §401(a)(118), (119), Mar. 23, 2018, 132 Stat. 1190.)

Editorial Notes

AMENDMENTS

2018—Pub. L. 115-141, §401(a)(118), inserted “expenses” after “farming” in section catchline.

Subsec. (d)(2)(B)(iii). Pub. L. 115-141, §401(a)(119), substituted “section 461(k)(2)(E)” for “subsection (c)(2)(E)”.

2014—Subsecs. (a), (b). Pub. L. 113-295, §221(a)(58)(A), substituted “any taxpayer to whom subsection (d) applies” for “any farming syndicate (as defined in subsection (c))” in subsec. (a) and in introductory provisions of subsec. (b).

Subsec. (c). Pub. L. 113-295, §221(a)(58)(C)(i), redesignated subsec. (d) as (c). Former subsec. (c) transferred to section 461 of this title.

Pub. L. 113-295, §221(a)(58)(B)(i), transferred subsec. (c) defining the term “farming syndicate” to section 461 of this title and redesignated it as subsec. (j) of that section.

Subsec. (d). Pub. L. 113-295, §221(a)(58)(D), struck out “Subsections (a) and (b) to apply to” before “Certain persons” in heading, redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1). Prior to amendment, text of par. (1) read as follows: “In the case of a taxpayer to whom this subsection applies, subsections (a) and (b) shall apply to the excess prepaid farm supplies of such taxpayer in the same manner as if such taxpayer were a farming syndicate.”

Pub. L. 113-295, §221(a)(58)(C)(i), redesignated subsec. (f) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 113-295, §221(a)(58)(C), added subsec. (e) and struck out former subsec. (e) which defined the terms “farming” and “limited entrepreneur” for purposes of this section.

Subsec. (f). Pub. L. 113-295, §221(a)(58)(C)(i), redesignated subsec. (f) as (d).

Subsec. (g). Pub. L. 113-295, §221(a)(58)(C)(i), struck out subsec. (g). Text read as follows: “Except as provided in subsection (f), subsections (a) and (b) shall not apply to any taxable year beginning after December 31, 1986.”

1997—Subsec. (f)(3)(B)(i). Pub. L. 105-34 substituted “section 121” for “section 1034”.

1988—Subsec. (g). Pub. L. 100-647 added subsec. (g).

1986—Pub. L. 99-514, §404(b)(1), substituted “for certain farming” for “in case of farming syndicates” in section catchline.

Subsec. (d). Pub. L. 99-514, §803(b)(8), substituted “Exception” for “Exceptions” as heading and amended text generally. Prior to amendment, text read as follows: “Subsection (a) shall not apply to—

“(1) any amount paid for supplies which are on hand at the close of the taxable year on account of fire, storm, flood, or other casualty or on account of disease or drought, or

“(2) any amount required to be charged to capital account under section 278.”

Subsec. (f). Pub. L. 99-514, §404(a), added subsec. (f).

1982—Subsec. (c)(1)(A), (B). Pub. L. 97-354 substituted “an S corporation” for “an electing small business corporation (as defined in section 1371(b))”.

1978—Subsec. (c)(2). Pub. L. 95-600 substituted in subpar. (E) “(or a spouse of any such member)” for “(with- in the meaning of section 267(c)(4))” and provided that for purposes of subpar. (E) the term “family” has the meaning given to such term by section 267(c)(4).

Statutory Notes and Related Subsidiaries

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 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105-34, set out as a note under section 121 of this title.

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 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by section 803(b)(8) of Pub. L. 99-514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99-514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101-239, set out as an Effective Date note under section 263A of this title.

Pub. L. 99-514, title IV, §404(c), Oct. 22, 1986, 100 Stat. 2224, provided that: “The amendments made by this section [amending this section] shall apply to amounts paid or incurred after March 1, 1986, in taxable years beginning after such date.”

Amendment by section 803(b)(8) of Pub. L. 99-514 applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99-514, set out as an Effective Date note under section 263A of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective as if included in this section or section 447 of this title at the time of their enactment, Oct. 4, 1976, see section 701(i)(4) of Pub. L. 95-600, set out as a note under section 447 of this title.

EFFECTIVE DATE

Pub. L. 94-455, title II, §207(a)(3), Oct. 4, 1976, 90 Stat. 1537, provided that:

“(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [enacting this section] shall apply to taxable years beginning after December 31, 1975.

“(B) TRANSITIONAL RULE.—In the case of a farming syndicate in existence on December 31, 1975, and for which there was no change of membership throughout its taxable year beginning in 1976, the amendments made by this subsection shall apply to taxable years beginning after December 31, 1976.”

§ 465. Deductions limited to amount at risk

(a) Limitation to amount at risk

(1) In general

In the case of—

(A) an individual, and

(B) a C corporation with respect to which the stock ownership requirement of paragraph (2) of section 542(a) is met,

engaged in an activity to which this section applies, any loss from such activity for the

taxable year shall be allowed only to the extent of the aggregate amount with respect to which the taxpayer is at risk (within the meaning of subsection (b)) for such activity at the close of the taxable year.

(2) Deduction in succeeding year

Any loss from an activity to which this section applies not allowed under this section for the taxable year shall be treated as a deduction allocable to such activity in the first succeeding taxable year.

(3) Special rules for applying paragraph (1)(B)

For purposes of paragraph (1)(B)—

(A) section 544(a)(2) shall be applied as if such section did not contain the phrase “or by or for his partner”; and

(B) sections 544(a)(4)(A) and 544(b)(1) shall be applied by substituting “the corporation meet the stock ownership requirements of section 542(a)(2)” for “the corporation a personal holding company”.

(b) Amounts considered at risk

(1) In general

For purposes of this section, a taxpayer shall be considered at risk for an activity with respect to amounts including—

(A) the amount of money and the adjusted basis of other property contributed by the taxpayer to the activity, and

(B) amounts borrowed with respect to such activity (as determined under paragraph (2)).

(2) Borrowed amounts

For purposes of this section, a taxpayer shall be considered at risk with respect to amounts borrowed for use in an activity to the extent that he—

(A) is personally liable for the repayment of such amounts, or

(B) has pledged property, other than property used in such activity, as security for such borrowed amount (to the extent of the net fair market value of the taxpayer’s interest in such property).

No property shall be taken into account as security if such property is directly or indirectly financed by indebtedness which is secured by property described in paragraph (1).

(3) Certain borrowed amounts excluded

(A) In general

Except to the extent provided in regulations, for purposes of paragraph (1)(B), amounts borrowed shall not be considered to be at risk with respect to an activity if such amounts are borrowed from any person who has an interest in such activity or from a related person to a person (other than the taxpayer) having such an interest.

(B) Exceptions

(i) Interest as creditor

Subparagraph (A) shall not apply to an interest as a creditor in the activity.

(ii) Interest as shareholder with respect to amounts borrowed by corporation

In the case of amounts borrowed by a corporation from a shareholder, subpara-

graph (A) shall not apply to an interest as a shareholder.

(C) Related person

For purposes of this subsection, a person (hereinafter in this paragraph referred to as the “related person”) is related to any person if—

(i) the related person bears a relationship to such person specified in section 267(b) or section 707(b)(1), or

(ii) the related person and such person are engaged in trades or business under common control (within the meaning of subsections (a) and (b) of section 52).

For purposes of clause (i), in applying section 267(b) or 707(b)(1), “10 percent” shall be substituted for “50 percent”.

(4) Exception

Notwithstanding any other provision of this section, a taxpayer shall not be considered at risk with respect to amounts protected against loss through nonrecourse financing, guarantees, stop loss agreements, or other similar arrangements.

(5) Amounts at risk in subsequent years

If in any taxable year the taxpayer has a loss from an activity to which subsection (a) applies, the amount with respect to which a taxpayer is considered to be at risk (within the meaning of subsection (b)) in subsequent taxable years with respect to that activity shall be reduced by that portion of the loss which (after the application of subsection (a)) is allowable as a deduction.

(6) Qualified nonrecourse financing treated as amount at risk

For purposes of this section—

(A) In general

Notwithstanding any other provision of this subsection, in the case of an activity of holding real property, a taxpayer shall be considered at risk with respect to the taxpayer’s share of any qualified nonrecourse financing which is secured by real property used in such activity.

(B) Qualified nonrecourse financing

For purposes of this paragraph, the term “qualified nonrecourse financing” means any financing—

(i) which is borrowed by the taxpayer with respect to the activity of holding real property,

(ii) which is borrowed by the taxpayer from a qualified person or represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by any Federal, State, or local government,

(iii) except to the extent provided in regulations, with respect to which no person is personally liable for repayment, and

(iv) which is not convertible debt.

(C) Special rule for partnerships

In the case of a partnership, a partner’s share of any qualified nonrecourse financing of such partnership shall be determined on

the basis of the partner's share of liabilities of such partnership incurred in connection with such financing (within the meaning of section 752).

(D) Qualified person defined

For purposes of this paragraph—

(i) In general

The term “qualified person” has the meaning given such term by section 49(a)(1)(D)(iv).

(ii) Certain commercially reasonable financing from related persons

For purposes of clause (i), section 49(a)(1)(D)(iv) shall be applied without regard to subclause (I) thereof (relating to financing from related persons) if the financing from the related person is commercially reasonable and on substantially the same terms as loans involving unrelated persons.

(E) Activity of holding real property

For purposes of this paragraph—

(i) Incidental personal property and services

The activity of holding real property includes the holding of personal property and the providing of services which are incidental to making real property available as living accommodations.

(ii) Mineral property

The activity of holding real property shall not include the holding of mineral property.

(c) Activities to which section applies

(1) Types of activities

This section applies to any taxpayer engaged in the activity of—

- (A) holding, producing, or distributing motion picture films or video tapes,
- (B) farming (as defined in section 464(e)),
- (C) leasing any section 1245 property (as defined in section 1245(a)(3)),
- (D) exploring for, or exploiting, oil and gas resources, or
- (E) exploring for, or exploiting, geothermal deposits (as defined in section 613(e)(2))¹

as a trade or business or for the production of income.

(2) Separate activities

For purposes of this section—

(A) In general

Except as provided in subparagraph (B), a taxpayer's activity with respect to each—

- (i) film or video tape,
- (ii) section 1245 property which is leased or held for leasing,
- (iii) farm,
- (iv) oil and gas property (as defined under section 614), or
- (v) geothermal property (as defined under section 614),

shall be treated as a separate activity.

(B) Aggregation rules

(i) Special rule for leases of section 1245 property by partnerships or S corporations

In the case of any partnership or S corporation, all activities with respect to section 1245 properties which—

- (I) are leased or held for lease, and
- (II) are placed in service in any taxable year of the partnership or S corporation,

shall be treated as a single activity.

(ii) Other aggregation rules

Rules similar to the rules of subparagraphs (B) and (C) of paragraph (3) shall apply for purposes of this paragraph.

(3) Extension to other activities

(A) In general

This section also applies to each activity—

- (i) engaged in by the taxpayer in carrying on a trade or business or for the production of income, and
- (ii) which is not described in paragraph (1).

(B) Aggregation of activities where taxpayer actively participates in management of trade or business

Except as provided in subparagraph (C), for purposes of this section, activities described in subparagraph (A) which constitute a trade or business shall be treated as one activity if—

- (i) the taxpayer actively participates in the management of such trade or business, or
- (ii) such trade or business is carried on by a partnership or an S corporation and 65 percent or more of the losses for the taxable year is allocable to persons who actively participate in the management of the trade or business.

(C) Aggregation or separation of activities under regulations

The Secretary shall prescribe regulations under which activities described in subparagraph (A) shall be aggregated or treated as separate activities.

(D) Application of subsection (b)(3)

In the case of an activity described in subparagraph (A), subsection (b)(3) shall apply only to the extent provided in regulations prescribed by the Secretary.

(4) Exclusion for certain equipment leasing by closely-held corporations

(A) In general

In the case of a corporation described in subsection (a)(1)(B) actively engaged in equipment leasing—

- (i) the activity of equipment leasing shall be treated as a separate activity, and
- (ii) subsection (a) shall not apply to losses from such activity.

(B) 50-percent gross receipts test

For purposes of subparagraph (A), a corporation shall not be considered to be ac-

¹ So in original. Probably should be followed by a comma.

tively engaged in equipment leasing unless 50 percent or more of the gross receipts of the corporation for the taxable year is attributable, under regulations prescribed by the Secretary, to equipment leasing.

(C) Component members of controlled group treated as a single corporation

For purposes of subparagraph (A), the component members of a controlled group of corporations shall be treated as a single corporation.

(5) Waiver of controlled group rule where there is substantial leasing activity

(A) In general

In the case of the component members of a qualified leasing group, paragraph (4) shall be applied—

- (i) by substituting “80 percent” for “50 percent” in subparagraph (B) thereof, and
- (ii) as if paragraph (4) did not include subparagraph (C) thereof.

(B) Qualified leasing group

For purposes of this paragraph, the term “qualified leasing group” means a controlled group of corporations which, for the taxable year and each of the 2 immediately preceding taxable years, satisfied each of the following 3 requirements:

(i) At least 3 employees

During the entire year, the group had at least 3 full-time employees substantially all of the services of whom were services directly related to the equipment leasing activity of the qualified leasing members.

(ii) At least 5 separate leasing transactions

During the year, the qualified leasing members in the aggregate entered into at least 5 separate equipment leasing transactions.

(iii) At least \$1,000,000 equipment leasing receipts

During the year, the qualified leasing members in the aggregate had at least \$1,000,000 in gross receipts from equipment leasing.

The term “qualified leasing group” does not include any controlled group of corporations to which, without regard to this paragraph, paragraph (4) applies.

(C) Qualified leasing member

For purposes of this paragraph, a corporation shall be treated as a qualified leasing member for the taxable year only if for each of the taxable years referred to in subparagraph (B)—

- (i) it is a component member of the controlled group of corporations, and
- (ii) it meets the requirements of paragraph (4)(B) (as modified by subparagraph (A)(i) of this paragraph).

(6) Definitions relating to paragraphs (4) and (5)

For purposes of paragraphs (4) and (5)—

(A) Equipment leasing

The term “equipment leasing” means—

- (i) the leasing of equipment which is section 1245 property, and
- (ii) the purchasing, servicing, and selling of such equipment.

(B) Leasing of master sound recordings, etc., excluded

The term “equipment leasing” does not include the leasing of master sound recordings, and other similar contractual arrangements with respect to tangible or intangible assets associated with literary, artistic, or musical properties.

(C) Controlled group of corporations; component member

The terms “controlled group of corporations” and “component member” have the same meanings as when used in section 1563. The determination of the taxable years taken into account with respect to any controlled group of corporations shall be made in a manner consistent with the manner set forth in section 1563.

(7) Exclusion of active businesses of qualified C corporations

(A) In general

In the case of a taxpayer which is a qualified C corporation—

- (i) each qualifying business carried on by such taxpayer shall be treated as a separate activity, and
- (ii) subsection (a) shall not apply to losses from such business.

(B) Qualified C corporation

For purposes of subparagraph (A), the term “qualified C corporation” means any corporation described in subparagraph (B) of subsection (a)(1) which is not—

- (i) a personal holding company (as defined in section 542(a)), or
- (ii) a personal service corporation (as defined in section 269A(b) but determined by substituting “5 percent” for “10 percent” in section 269A(b)(2)).

(C) Qualifying business

For purposes of this paragraph, the term “qualifying business” means any active business if—

- (i) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 1 full-time employee substantially all the services of whom were in the active management of such business,
- (ii) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 3 full-time, nonowner employees substantially all of the services of whom were services directly related to such business,
- (iii) the amount of the deductions attributable to such business which are allowable to the taxpayer solely by reason of sections 162 and 404 for the taxable year exceeds 15 percent of the gross income from such business for such year, and
- (iv) such business is not an excluded business.

(D) Special rules for application of subparagraph (C)**(i) Partnerships in which taxpayer is a qualified corporate partner**

In the case of an active business of a partnership, if—

(I) the taxpayer is a qualified corporate partner in the partnership, and

(II) during the entire 12-month period ending on the last day of the partnership's taxable year, there was at least 1 full-time employee of the partnership (or of a qualified corporate partner) substantially all the services of whom were in the active management of such business,

then the taxpayer's proportionate share (determined on the basis of its profits interest) of the activities of the partnership in such business shall be treated as activities of the taxpayer (and clause (i) of subparagraph (C) shall not apply in determining whether such business is a qualifying business of the taxpayer).

(ii) Qualified corporate partner

For purposes of clause (i), the term "qualified corporate partner" means any corporation if—

(I) such corporation is a general partner in the partnership,

(II) such corporation has an interest of 10 percent or more in the profits and losses of the partnership, and

(III) such corporation has contributed property to the partnership in an amount not less than the lesser of \$500,000 or 10 percent of the net worth of the corporation.

For purposes of subclause (III), any contribution of property other than money shall be taken into account at its fair market value.

(iii) Deduction for owner employee compensation not taken into account

For purposes of clause (iii) of subparagraph (C), there shall not be taken into account any deduction in respect of compensation for personal services rendered by any employee (other than a non-owner employee) of the taxpayer or any member of such employee's family (within the meaning of section 318(a)(1)).

(iv) Special rule for banks

For purposes of clause (iii) of subparagraph (C), in the case of a bank (as defined in section 581) or a financial institution to which section 591 applies—

(I) gross income shall be determined without regard to the exclusion of interest from gross income under section 103, and

(II) in addition to the deductions described in such clause, there shall also be taken into account the amount of the deductions which are allowable for amounts paid or credited to the accounts of depositors or holders of accounts as dividends or interest on their deposits or

withdrawable accounts under section 163 or 591.

(v) Special rule for life insurance companies**(I) In general**

Clause (iii) of subparagraph (C) shall not apply to any insurance business of a qualified life insurance company.

(II) Insurance business

For purposes of subclause (I), the term "insurance business" means any business which is not a noninsurance business (within the meaning of section 453B(e)(3)).

(III) Qualified life insurance company

For purposes of subclause (I), the term "qualified life insurance company" means any company which would be a life insurance company as defined in section 816 if unearned premiums were not taken into account under subsections (a)(2) and (c)(2) of section 816.

(E) Definitions

For purposes of this paragraph—

(i) Non-owner employee

The term "non-owner employee" means any employee who does not own, at any time during the taxable year, more than 5 percent in value of the outstanding stock of the taxpayer. For purposes of the preceding sentence, section 318 shall apply, except that "5 percent" shall be substituted for "50 percent" in section 318(a)(2)(C).

(ii) Excluded business

The term "excluded business" means—

(I) equipment leasing (as defined in paragraph (6)), and

(II) any business involving the use, exploitation, sale, lease, or other disposition of master sound recordings, motion picture films, video tapes, or tangible or intangible assets associated with literary, artistic, musical, or similar properties.

(iii) Special rules relating to communications industry, etc.**(I) Business not excluded where taxpayer not completely at risk**

A business involving the use, exploitation, sale, lease, or other disposition of property described in subclause (II) of clause (ii) shall not constitute an excluded business by reason of such subclause if the taxpayer is at risk with respect to all amounts paid or incurred (or chargeable to capital account) in such business.

(II) Certain licensed businesses not excluded

For purposes of subclause (II) of clause (ii), the provision of radio, television, cable television, or similar services pursuant to a license or franchise granted by the Federal Communications Com-

mission or any other Federal, State, or local authority shall not constitute an excluded business by reason of such subclause.

(F) Affiliated group treated as 1 taxpayer

For purposes of this paragraph—

(i) In general

Except as provided in subparagraph (G), the component members of an affiliated group of corporations shall be treated as a single taxpayer.

(ii) Affiliated group of corporations

The term “affiliated group of corporations” means an affiliated group (as defined in section 1504(a)) which files or is required to file consolidated income tax returns.

(iii) Component member

The term “component member” means an includible corporation (as defined in section 1504) which is a member of the affiliated group.

(G) Loss of 1 member of affiliated group may not offset income of personal holding company or personal service corporation

Nothing in this paragraph shall permit any loss of a member of an affiliated group to be used as an offset against the income of any other member of such group which is a personal holding company (as defined in section 542(a)) or a personal service corporation (as defined in section 269A(b) but determined by substituting “5 percent” for “10 percent” in section 269A(b)(2)).

(d) Definition of loss

For purposes of this section, the term “loss” means the excess of the deductions allowable under this chapter for the taxable year (determined without regard to the first sentence of subsection (a)) and allocable to an activity to which this section applies over the income received or accrued by the taxpayer during the taxable year from such activity (determined without regard to subsection (e)(1)(A)).

(e) Recapture of losses where amount at risk is less than zero

(1) In general

If zero exceeds the amount for which the taxpayer is at risk in any activity at the close of any taxable year—

(A) the taxpayer shall include in his gross income for such taxable year (as income from such activity) an amount equal to such excess, and

(B) an amount equal to the amount so included in gross income shall be treated as a deduction allocable to such activity for the first succeeding taxable year.

(2) Limitation

The excess referred to in paragraph (1) shall not exceed—

(A) the aggregate amount of the reductions required by subsection (b)(5) with respect to the activity by reason of losses for all prior taxable years beginning after December 31, 1978, reduced by

(B) the amounts previously included in gross income with respect to such activity under this subsection.

(Added Pub. L. 94-455, title II, §204(a), Oct. 4, 1976, 90 Stat. 1531; amended Pub. L. 95-600, title II, §§201(a), (c)(1), 202, 203, title VII, §701(k)(2), Nov. 6, 1978, 92 Stat. 2814, 2816, 2906; Pub. L. 95-618, title IV, §402(d), Nov. 9, 1978, 92 Stat. 3202; Pub. L. 96-222, title I, §102(a)(1)(A)–(D), Apr. 1, 1980, 94 Stat. 206; Pub. L. 97-354, §5(a)(31), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 98-369, div. A, title IV, §432(a)–(c), title VII, §721(x)(2), July 18, 1984, 98 Stat. 811-814, 971; Pub. L. 99-514, title II, §201(d)(7)(A), title V, §503(a), (b), title X, §1011(b)(1), Oct. 22, 1986, 100 Stat. 2141, 2243, 2389; Pub. L. 101-508, title XI, §§11813(b)(15), 11815(b)(3), Nov. 5, 1990, 104 Stat. 1388-555, 1388-558; Pub. L. 108-357, title IV, §413(c)(7), Oct. 22, 2004, 118 Stat. 1507; Pub. L. 113-295, div. A, title II, §221(a)(59), Dec. 19, 2014, 128 Stat. 4047; Pub. L. 115-97, title I, §13512(b)(2), Dec. 22, 2017, 131 Stat. 2143.)

Editorial Notes

AMENDMENTS

2017—Subsec. (c)(7)(D)(v)(II). Pub. L. 115-97 substituted “section 453B(e)(3)” for “section 806(b)(3)”.

2014—Subsec. (c)(3)(A). Pub. L. 113-295 substituted “This” for “In the case of taxable years beginning after December 31, 1978, this”.

2004—Subsec. (c)(7)(B). Pub. L. 108-357 inserted “or” at end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: “a foreign personal holding company (as defined in section 552(a)), or”.

1990—Subsec. (b)(6)(D). Pub. L. 101-508, §11813(b)(15), substituted “49(a)(1)(D)(iv)” for “46(c)(8)(D)(iv)” wherever appearing.

Subsec. (c)(1)(E). Pub. L. 101-508, §11815(b)(3), substituted “section 613(e)(2)” for “section 613(e)(3)”.

1986—Subsec. (b)(3)(C). Pub. L. 99-514, §201(d)(7)(A), struck out “defined” after “person” in heading and amended text generally. Prior to amendment, text read as follows: “For purposes of subparagraph (A), the term ‘related person’ has the meaning given such term by section 168(e)(4).”

Subsec. (b)(6). Pub. L. 99-514, §503(b), added par. (6).
Subsec. (c)(3)(D), (E). Pub. L. 99-514, §503(a), redesignated subpar. (E) as (D) and struck out former subpar. (D) which read as follows: “In the case of activities described in subparagraph (A), the holding of real property (other than mineral property) shall be treated as a separate activity, and subsection (a) shall not apply to losses from such activity. For purposes of the preceding sentence, personal property and services which are incidental to making real property available as living accommodations shall be treated as part of the activity of holding such real property.”

Subsec. (c)(7)(D)(v)(II). Pub. L. 99-514, §1011(b)(1), substituted “section 806(b)(3)” for “section 806(c)(3)”.

1984—Subsec. (a)(1)(B). Pub. L. 98-369, §721(x)(2), substituted “a C corporation” for “a corporation”.

Subsec. (b)(3). Pub. L. 98-369, §432(c), designated existing provisions as subpar. (A), in subpar. (A) as so designated struck out subpar. designations “(A)” and “(B)” and substituted provisions that, except as provided by regulation, amounts borrowed shall not be considered to be at risk if such amounts are borrowed from any person who has an interest in the activity or from a related person to a person (other than the taxpayer) having such an interest for provision that such amounts would not be considered to be at risk if borrowed from a person who had an interest (other than as a creditor) in such activity or who had a relationship to the taxpayer specified in section 267(b) of this title, and added subpars. (B) and (C).

Subsec. (c)(2). Pub. L. 98-369, § 432(b), designated existing provisions as subpar. (A), in subpar. (A) as so designated, redesignated former subpars. (A) to (E) as cls. (i) to (v), respectively, struck out provision that a partner's interest in a partnership or a shareholder's interest in an S corporation had to be treated as a single activity to the extent that the partnership or the S corporation was engaged in activities described in any subparagraph of this paragraph, and added subpar. (B).

Subsec. (c)(7). Pub. L. 98-369, § 432(a), added par. (7).

1982—Subsec. (a)(1). Pub. L. 97-354, § 5(a)(31)(A), redesignated subpar. (C) as (B). Former subpar. (B), relating to an electing small business corporation, was struck out.

Subsec. (a)(3). Pub. L. 97-354, § 5(a)(31)(B), substituted “paragraph (1)(B)” for “paragraph (1)(C)” in heading and text.

Subsec. (c)(2). Pub. L. 97-354, § 5(a)(31)(C), substituted “an S corporation” for “an electing small business corporation” the first place appearing and “the S corporation” for “an electing small business corporation” the second place appearing.

Subsec. (c)(3)(B)(ii). Pub. L. 97-354, § 5(a)(31)(D), substituted “an S corporation” for “electing small business corporation (as defined in section 1371(b))”.

Subsec. (c)(4)(A). Pub. L. 97-354, § 5(a)(31)(E), substituted “subsection (a)(1)(B)” for “subsection (a)(1)(C)”.

1980—Subsec. (a)(1)(C), (3). Pub. L. 96-222, § 102(a)(1)(A), struck out in par. (1)(C) “(determined by reference to the rules contained in section 318 rather than under section 544)” after “of section 542(a)” and added par. (3).

Subsec. (b)(5). Pub. L. 96-222, § 102(a)(1)(D)(iii), substituted “to which subsection (a) applies” for “to which this section applies”.

Subsec. (c)(3)(D). Pub. L. 96-222, § 102(a)(1)(D)(ii), struck out provisions relating to equipment leasing by closely-held corporations.

Subsec. (c)(4) to (6). Pub. L. 96-222, § 102(a)(1)(D)(i), added pars. (4) to (6).

Subsec. (d). Pub. L. 96-222, § 102(a)(1)(B), inserted “(determined without regard to subsection (e)(1)(A))” after “from such activity”.

Subsec. (e)(2)(A). Pub. L. 96-222, § 102(a)(1)(C), inserted “by reason of losses” after “with respect to the activity”.

1978—Pub. L. 95-600, § 201(c)(1), substituted “Deductions limited to amount at risk” for “Deductions limited to amount at risk in case of certain activities” in section catchline.

Subsec. (a). Pub. L. 95-600, § 202, redesignated existing provisions as par. (1), substituted provisions relating to limitations with respect to an individual, an electing small business corporation defined under section 1371(b) of this title, and a corporation meeting the stock ownership requirements of section 542(a)(2) of this title and the rules of section 318 of this title, for provisions relating to limitations with respect to a taxpayer other than a corporation which is neither an electing small business corporation defined under section 1371(b) of this title, nor a personal holding company defined under section 542 of this title, and added par. (2).

Subsec. (c)(1)(E). Pub. L. 95-618, § 402(d)(1), added subpar. (E).

Subsec. (c)(2)(E). Pub. L. 95-618, § 402(d)(2), added subpar. (E).

Subsec. (c)(3). Pub. L. 95-600, § 201(a), added par. (3).

Subsec. (d). Pub. L. 95-600, § 701(k)(2), substituted “(determined without regard to the first sentence of subsection (a))” for “(determined without regard to this section)”.

Subsec. (e). Pub. L. 95-600, § 203, added subsec. (e).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 13512(c)

of Pub. L. 115-97, set out as a note under section 453B of this title.

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 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(15) of Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(7)(A) of Pub. L. 99-514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99-514, set out as a note under section 168 of this title.

Amendment by section 201(d)(7)(A) of Pub. L. 99-514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99-514, set out as a note under section 46 of this title.

Pub. L. 99-514, title V, § 503(c), Oct. 22, 1986, 100 Stat. 2244, provided that:

“(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to losses incurred after December 31, 1986, with respect to property placed in service by the taxpayer after December 31, 1986.

“(2) SPECIAL RULE FOR LOSSES OF S CORPORATION, PARTNERSHIP, OR PASS-THRU ENTITY.—In the case of an interest in an S corporation, a partnership, or other pass-thru entity acquired after December 31, 1986, the amendments made by this section shall apply to losses after December 31, 1986, which are attributable to property placed in service by the S corporation, partnership, or pass-thru entity on, before, or after January 1, 1986.

“(3) SPECIAL RULE FOR ATHLETIC STADIUM.—The amendments made by this section shall not apply to any losses incurred by a taxpayer with respect to the holding of a multi-use athletic stadium in Pittsburgh, Pennsylvania, which the taxpayer acquired in a sale for which a letter of understanding was entered into before April 16, 1986.”

Amendment by section 1011(b)(1) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99-514, set out as a note under section 453B of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title IV, § 432(d), July 18, 1984, 98 Stat. 815, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1983; except that any loss from an activity described in section 465(c)(7)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this section)

which (but for the amendments made by this section) would have been treated as a deduction for the taxpayer's first taxable year beginning after December 31, 1983, under section 465(a)(2) of such Code shall be allowed as a deduction for such first taxable year notwithstanding such amendments."

Amendment by section 721(x)(2) of Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-618 applicable with respect to wells commenced on or after Oct. 1, 1978, in taxable years ending on or after such date, see section 402(e) of Pub. L. 95-618, set out as a note under section 263 of this title.

Pub. L. 95-600, title II, §204(a), Nov. 6, 1978, 92 Stat. 2817, provided that: "The amendments made by this subtitle [amending this section and section 704 of this title and enacting provisions set out as notes under this section and section 704 of this title] shall apply to taxable years beginning after December 31, 1978."

Pub. L. 95-600, title VII, §701(k)(3), Nov. 6, 1978, 92 Stat. 2906, provided that: "The amendments made by this subsection [amending this section and provisions set out below] shall take effect on October 4, 1976."

EFFECTIVE DATE AND TRANSITIONAL RULES

Pub. L. 94-455, title II, §204(c), Oct. 4, 1976, 90 Stat. 1532, as amended by Pub. L. 95-600, title VII, §701(k)(1), Nov. 6, 1978, 92 Stat. 2906; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [enacting this section] shall apply to losses attributable to amounts paid or incurred in taxable years beginning after December 31, 1975. For purposes of this subsection, any amount allowed or allowable for depreciation or amortization for any period shall be treated as an amount paid or incurred in such period.

"(2) SPECIAL TRANSITIONAL RULES FOR MOVIES AND VIDEO TAPES.—

"(A) IN GENERAL.—In the case of any activity described in section 465(c)(1)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the amendments made by this section shall not apply to—

"(i) deductions for depreciation or amortization with respect to property the principal production of which began before September 11, 1975, and for the purchase of which there was on September 11, 1975, and at all times thereafter a binding contract, and

"(ii) deductions attributable to producing or distributing property the principal production of which began before September 11, 1975.

"(B) EXCEPTION FOR CERTAIN AGREEMENTS WHERE PRINCIPAL PHOTOGRAPHY BEGIN BEFORE 1976.—In the case of any activity described in section 465(c)(1)(A) of the Internal Revenue Code of 1986, the amendments made by this section shall not apply to deductions attributable to the producing of a film the principal photography of which began on or before December 31, 1975, if—

"(i) on September 10, 1975, there was an agreement with the director or a principal motion pic-

ture star, or on or before September 10, 1975, there had been expended (or committed to the production) an amount not less than the lower of \$100,000 or 10 percent of the estimated costs of producing the film, and

"(ii) the production takes place in the United States.

Subparagraph (A) shall apply only to taxpayers who held their interests on September 10, 1975. Subparagraph (B) shall apply only to taxpayers who held their interests on December 31, 1975.

"(3) SPECIAL TRANSITIONAL RULES FOR LEASING ACTIVITIES.—

"(A) RULE FOR LEASES OTHER THAN OPERATING LEASES.—In the case of any activity described in section 465(c)(1)(C) of the Internal Revenue Code of 1986, the amendments made by this section shall not apply with respect to—

"(i) leases entered into before January 1, 1976, and

"(ii) leases where the property was ordered by the lessor or lessee before January 1, 1976.

"(B) HOLDING OF INTERESTS FOR PURPOSES OF SUBPARAGRAPH (A).—Subparagraph (A) shall apply only to taxpayers who held their interests in the property on December 31, 1975.

"(C) SPECIAL RULE FOR OPERATING LEASES.—In the case of a lease described in section 46(e)(3)(B) of the Internal Revenue Code of 1986—

"(i) subparagraph (A) shall be applied by substituting 'May 1, 1976' for 'January 1, 1976' each place it appears therein, and

"(ii) subparagraph (B) shall be applied by substituting 'April 30, 1976' for 'December 31, 1975'."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

TRANSITIONAL RULES FOR RECAPTURE PROVISIONS AND LEASING ACTIVITIES

Pub. L. 95-600, title II, §204(b), Nov. 6, 1978, 92 Stat. 2817, as amended by Pub. L. 96-222, title I, §102(a)(1)(E), Apr. 1, 1980, 94 Stat. 208; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) RECAPTURE PROVISIONS.—If the amount for which the taxpayer is at risk in any activity as of the close of the taxpayer's last taxable year beginning before January 1, 1979, is less than zero, section 465(e)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by section 203 of this Act) shall be applied with respect to such activity of the taxpayer by substituting such negative amount for zero.

"(2) SPECIAL TRANSITIONAL RULES FOR LEASING ACTIVITIES.—

"(A) RULE FOR LEASES.—In the case of any activity described in section 465(c)(1)(C) of such Code in which a corporation described in section 465(a)(1)(C) of such Code is engaged, the amendments made by this subtitle [amending sections 465 and 704 of this title and enacting provisions set out as notes under sections 465 and 704 of this title] shall not apply with respect to—

"(i) leases entered into before November 1, 1978, and

"(ii) leases where the property was ordered by the lessor or lessee before November 1, 1978.

"(B) HOLDING OF INTERESTS FOR PURPOSES OF SUBPARAGRAPH (A).—Subparagraph (A) shall apply only to taxpayers who held their interests in the property on October 31, 1978."

[§ 466. Repealed. Pub. L. 99-514, title VIII, § 823(a), Oct. 22, 1986, 100 Stat. 2373]

Section, added Pub. L. 95-600, title III, § 373(a), Nov. 6, 1978, 92 Stat. 2863; amended Pub. L. 96-222, title I, § 103(a)(16), Apr. 1, 1980, 94 Stat. 214, related to qualified discount coupons redeemed after close of taxable year.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Pub. L. 99-514, title VIII, § 823(c), Oct. 22, 1986, 100 Stat. 2374, provided:

“(1) **IN GENERAL.**—The amendments made by this section [amending section 461 of this title and repealing this section] shall apply to taxable years beginning after December 31, 1986.

“(2) **CHANGE IN METHOD OF ACCOUNTING.**—In the case of any taxpayer who elected to have section 466 of the Internal Revenue Code of 1954 [now 1986] apply for such taxpayer’s last taxable year beginning before January 1, 1987, and is required to change its method of accounting by reason of the amendments made by this section for any taxable year—

“(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 the Internal Revenue Code of 1986 to be taken into account by the taxpayer shall—

“(i) be reduced by the balance in the suspense account under section 466(e) of such Code as of the close of such last taxable year, and

“(ii) be taken into account over a period not longer than 4 years.”

§ 467. Certain payments for the use of property or services

(a) Accrual method on present value basis

In the case of the lessor or lessee under any section 467 rental agreement, there shall be taken into account for purposes of this title for any taxable year the sum of—

(1) the amount of the rent which accrues during such taxable year as determined under subsection (b), and

(2) interest for the year on the amounts which were taken into account under this subsection for prior taxable years and which are unpaid.

(b) Accrual of rental payments

(1) Allocation follows agreement

Except as provided in paragraph (2), the determination of the amount of the rent under any section 467 rental agreement which accrues during any taxable year shall be made—

(A) by allocating rents in accordance with the agreement, and

(B) by taking into account any rent to be paid after the close of the period in an amount determined under regulations which shall be based on present value concepts.

(2) Constant rental accrual in case of certain tax avoidance transactions, etc.

In the case of any section 467 rental agreement to which this paragraph applies, the portion of the rent which accrues during any taxable year shall be that portion of the constant rental amount with respect to such agreement which is allocable to such taxable year.

(3) Agreements to which paragraph (2) applies

Paragraph (2) applies to any rental payment agreement if—

(A) such agreement is a disqualified leaseback or long-term agreement, or

(B) such agreement does not provide for the allocation referred to in paragraph (1)(A).

(4) Disqualified leaseback or long-term agreement

For purposes of this subsection, the term “disqualified leaseback or long-term agreement” means any section 467 rental agreement if—

(A) such agreement is part of a leaseback transaction or such agreement is for a term in excess of 75 percent of the statutory recovery period for the property, and

(B) a principal purpose for providing increasing rents under the agreement is the avoidance of tax imposed by this subtitle.

(5) Exceptions to disqualification in certain cases

The Secretary shall prescribe regulations setting forth circumstances under which agreements will not be treated as disqualified leaseback or long-term agreements, including circumstances relating to—

(A) changes in amounts paid determined by reference to price indices,

(B) rents based on a fixed percentage of lessee receipts or similar amounts,

(C) reasonable rent holidays, or

(D) changes in amounts paid to unrelated 3rd parties.

(c) Recapture of prior understated inclusions under leaseback or long-term agreements

(1) In general

If—

(A) the lessor under any section 467 rental agreement disposes of any property subject to such agreement during the term of such agreement, and

(B) such agreement is a leaseback or long-term agreement to which paragraph (2) of subsection (b) did not apply,

the recapture amount shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Recapture amount

For purposes of paragraph (1), the term “recapture amount” means the lesser of—

(A) the prior understated inclusions, or

(B) the excess of the amount realized (or in the case of a disposition other than a sale, exchange, or involuntary conversion, the fair market value of the property) over the adjusted basis of such property.

The amount determined under subparagraph (B) shall be reduced by the amount of any gain treated as ordinary income on the disposition under any other provision of this subtitle.

(3) Prior understated inclusions

For purposes of this subsection, the term “prior understated inclusion” means the excess (if any) of—

(A) the amount which would have been taken into account by the lessor under sub-