

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 picture 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.

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 subsection (a) for periods before the disposition if subsection (b)(2) had applied to the agreement, over

(B) the amount taken into account under subsection (a) by the lessor for periods before the disposition.

(4) Leaseback or long-term agreement

For purposes of this subsection, the term “leaseback or long-term agreement” means any agreement described in subsection (b)(4)(A).

(5) Special rules

Under regulations prescribed by the Secretary—

(A) exceptions similar to the exceptions applicable under section 1245 or 1250 (whichever is appropriate) shall apply for purposes of this subsection,

(B) any transferee in a disposition excepted by reason of subparagraph (A) who has a transferred basis in the property shall be treated in the same manner as the transferor, and