

use property), rules similar to the rules of section 469(g) shall apply for purposes of this section.

**(3) Coordination with section 469**

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

**(4) Coordination with sections 1031 and 1033**

**(A) In general**

Sections 1031(a) and 1033(a) shall not apply if—

(i) the exchanged or converted property is tax-exempt use property subject to a lease which was entered into before March 13, 2004, and which would not have met the requirements of subsection (d) had such requirements been in effect when the lease was entered into, or

(ii) the replacement property is tax-exempt use property subject to a lease which does not meet the requirements of subsection (d).

**(B) Adjusted basis**

In the case of property acquired by the lessor in a transaction to which section 1031 or 1033 applies, the adjusted basis of such property for purposes of this section shall be equal to the lesser of—

(i) the fair market value of the property as of the beginning of the lease term, or

(ii) the amount which would be the lessor's adjusted basis if such sections did not apply to such transaction.

**(f) Other definitions**

For purposes of this section—

**(1) Related parties**

The terms “lessor”, “lessee”, and “lender” each include any related party (within the meaning of section 197(f)(9)(C)(i)).

**(2) Lease term**

The term “lease term” has the meaning given to such term by section 168(i)(3).

**(3) Lender**

The term “lender” means, with respect to any lease, a person that makes a loan to the lessor which is secured (or economically similar to being secured) by the lease or the leased property.

**(4) Loan**

The term “loan” includes any similar arrangement.

**(g) Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations which—

(1) allow in appropriate cases the aggregation of property subject to the same lease, and

(2) provide for the determination of the allocation of interest expense for purposes of this section.

(Added Pub. L. 108-357, title VIII, § 848(a), Oct. 22, 2004, 118 Stat. 1602; amended Pub. L. 110-172, § 7(c), Dec. 29, 2007, 121 Stat. 2482.)

AMENDMENTS

2007—Subsec. (c)(2). Pub. L. 110-172, § 7(c)(1), reenacted heading without change and amended text generally.

Prior to amendment, text read as follows: “The term ‘tax-exempt use property’ has the meaning given to such term by section 168(h), except that such section shall be applied—

“(A) without regard to paragraphs (1)(C) and (3) thereof, and

“(B) as if property described in—

“(i) section 167(f)(1)(B),

“(ii) section 167(f)(2), and

“(iii) section 197 intangible, were tangible property.

Such term shall not include property which would (but for this sentence) be tax-exempt use property solely by reason of section 168(h)(6) if any credit is allowable under section 42 or 47 with respect to such property.”

Subsec. (d)(1)(A). Pub. L. 110-172, § 7(c)(2), in introductory provisions, substituted “(at all times during the lease term)” for “(at any time during the lease term)”.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 7(e) of Pub. L. 110-172, set out as a note under section 1092 of this title.

EFFECTIVE DATE

Pub. L. 108-357, title VIII, § 849, Oct. 22, 2004, 118 Stat. 1606, as amended by Pub. L. 109-135, title IV, § 403(ff), Dec. 21, 2005, 119 Stat. 2631, provided that:

“(a) IN GENERAL.—Except as provided in this section, the amendments made by this part [part III (§§ 847-849) of subtitle B of title VIII of Pub. L. 108-357, enacting this section and amending sections 167, 168, and 197 of this title] shall apply to leases entered into after March 12, 2004, and in the case of property treated as tax-exempt use property other than by reason of a lease, to property acquired after March 12, 2004.

“(b) EXCEPTION.—

“(1) IN GENERAL.—The amendments made by this part shall not apply to qualified transportation property.

“(2) QUALIFIED TRANSPORTATION PROPERTY.—For purposes of paragraph (1), the term ‘qualified transportation property’ means domestic property subject to a lease with respect to which a formal application—

“(A) was submitted for approval to the Federal Transit Administration (an agency of the Department of Transportation) after June 30, 2003, and before March 13, 2004,

“(B) is approved by the Federal Transit Administration before January 1, 2006, and

“(C) includes a description of such property and the value of such property.

“(3) EXCHANGES AND CONVERSION OF TAX-EXEMPT USE PROPERTY.—Section 470(e)(4) of the Internal Revenue Code of 1986, as added by section 848, shall apply to property exchanged or converted after the date of the enactment of this Act [Oct. 22, 2004].

“(4) INTANGIBLES AND INDIAN TRIBAL GOVERNMENTS.—The amendments made subsections (b)(2), (b)(3), and (e) of section 847 [amending sections 167, 168, and 197 of this title], and the treatment of property described in clauses (ii) and (iii) of section 470(c)(2)(B) of the Internal Revenue Code of 1986 (as added by section 848) as tangible property, shall apply to leases entered into after October 3, 2004.”

SUBPART D—INVENTORIES

Sec. 471.	General rule for inventories.
472.	Last-in, first-out inventories.
473.	Qualified liquidations of LIFO inventories.
474.	Simplified dollar-value LIFO method for certain small businesses.
475.	Mark to market accounting method for dealers in securities.

AMENDMENTS

1993—Pub. L. 103-66, title XIII, § 13223(b)(2), Aug. 10, 1993, 107 Stat. 484, added item 475.

1986—Pub. L. 99-514, title VIII, §802(b), Oct. 22, 1986, 100 Stat. 2350, substituted “Simplified dollar-value LIFO method for certain small businesses” for “Election by certain small businesses to use one inventory pool” in item 474.

1981—Pub. L. 97-34, title II, §237(b), Aug. 13, 1981, 95 Stat. 253, added item 474.

1980—Pub. L. 96-223, title IV, §403(a)(2), Apr. 2, 1980, 94 Stat. 304, added item 473.

### § 471. General rule for inventories

#### (a) General rule

Whenever in the opinion of the Secretary the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer on such basis as the Secretary may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income.

#### (b) Estimates of inventory shrinkage permitted

A method of determining inventories shall not be treated as failing to clearly reflect income solely because it utilizes estimates of inventory shrinkage that are confirmed by a physical count only after the last day of the taxable year if—

- (1) the taxpayer normally does a physical count of inventories at each location on a regular and consistent basis, and
- (2) the taxpayer makes proper adjustments to such inventories and to its estimating methods to the extent such estimates are greater than or less than the actual shrinkage.

#### (c) Cross reference

**For rules relating to capitalization of direct and indirect costs of property, see section 263A.**

(Aug. 16, 1954, ch. 736, 68A Stat. 159; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99-514, title VIII, §803(b)(4), Oct. 22, 1986, 100 Stat. 2356; Pub. L. 105-34, title IX, §961(a), Aug. 5, 1997, 111 Stat. 891.)

#### AMENDMENTS

1997—Subsecs. (b), (c). Pub. L. 105-34 added subsec. (b) and redesignated former subsec. (b) as (c).

1986—Pub. L. 99-514 designated existing provisions as subsec. (a) and added subsec. (b).

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title IX, §961(b)(1), Aug. 5, 1997, 111 Stat. 891, provided that: “The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].”

#### 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 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.

Amendment by 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.

#### COORDINATION WITH SECTION 481

Pub. L. 105-34, title IX, §961(b)(2), Aug. 5, 1997, 111 Stat. 891, provided that: “In the case of any taxpayer permitted by this section [amending this section and enacting provisions set out as a note above] to change its method of accounting to a permissible method for any taxable year—

“(A) such changes shall be treated as initiated by the taxpayer,

“(B) such changes shall be treated as made with the consent of the Secretary of the Treasury, and

“(C) the period for taking into account the adjustments under section 481 [26 U.S.C. 481] by reason of such change shall be 4 years.”

#### STUDY OF ACCOUNTING METHODS FOR INVENTORY; REPORT NOT LATER THAN DECEMBER 31, 1982

Pub. L. 97-34, title II, §238, Aug. 13, 1981, 95 Stat. 254, directed Secretary of the Treasury to conduct a study of methods of tax accounting for inventory with a view towards development of simplified methods and to report to Congress, not later than Dec. 31, 1982, prior to repeal by Pub. L. 100-647, title VI, §6252(a)(2), Nov. 10, 1988, 102 Stat. 3752.

### § 472. Last-in, first-out inventories

#### (a) Authorization

A taxpayer may use the method provided in subsection (b) (whether or not such method has been prescribed under section 471) in inventorying goods specified in an application to use such method filed at such time and in such manner as the Secretary may prescribe. The change to, and the use of, such method shall be in accordance with such regulations as the Secretary may prescribe as necessary in order that the use of such method may clearly reflect income.

#### (b) Method applicable

In inventorying goods specified in the application described in subsection (a), the taxpayer shall:

- (1) Treat those remaining on hand at the close of the taxable year as being: First, those included in the opening inventory of the taxable year (in the order of acquisition) to the extent thereof; and second, those acquired in the taxable year;

- (2) Inventory them at cost; and

- (3) Treat those included in the opening inventory of the taxable year in which such method is first used as having been acquired at the same time and determine their cost by the average cost method.

#### (c) Condition

Subsection (a) shall apply only if the taxpayer establishes to the satisfaction of the Secretary that the taxpayer has used no procedure other than that specified in paragraphs (1) and (3) of subsection (b) in inventorying such goods to ascertain the income, profit, or loss of the first taxable year for which the method described in subsection (b) is to be used, for the purpose of a report or statement covering such taxable year—

- (1) to shareholders, partners, or other proprietors, or to beneficiaries, or
- (2) for credit purposes.