''(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

(C) for purposes of sections 170(e) and 751(c), amounts treated as ordinary income under this section shall be treated in the same manner as amounts treated as ordinary income under section 1245 or 1250.

(d) Section 467 rental agreements

(1) In general

Except as otherwise provided in this subsection, the term ''section 467 rental agreements'' means any rental agreement for the use of tangible property under which—

(A) there is at least one amount allocable to the use of property during a calendar year which is to be paid after the close of the calendar year following the calendar year in which such use occurs, or

(B) there are increases in the amount to be paid as rent under the agreement.

(2) Section not to apply to agreements involving payments of $250,000 or less

This section shall not apply to any amount to be paid for the use of property if the sum of the following amounts does not exceed $250,000—

(A) the aggregate amount of payments received as consideration for such use of property, and

(B) the aggregate value of any other consideration to be received for such use of property.

For purposes of the preceding sentence, rules similar to the rules of clauses (ii) and (iii) of section 1274(c)(4)(C) shall apply.

(e) Definitions

For purposes of this section—

(1) Constant rental amount

The term ''constant rental amount'' means, with respect to any section 467 rental agreement, the amount which, if paid as of the close of each lease period under the agreement, would result in an aggregate present value equal to the present value of the aggregate payments required under the agreement.

(2) Leaseback transaction

A transaction is a leaseback transaction if it involves a leaseback to any person who had an interest in such property at any time within 2 years before such leaseback (or to a related person).

(3) Statutory recovery period

(A) In general

In the case of:	The statutory recovery period is:
3-year property	3 years
5-year property	5 years
7-year property	7 years
10-year property	10 years
15-year and 20-year property	15 years
Residential rental property and nonresidential real property	19 years
Any railroad grading or tunnel bore	50 years.

(B) Special rule for property not depreciable under section 168

In the case of property to which section 168 does not apply, subparagraph (A) shall be applied as if section 168 applies to such property.

(4) Discount and interest rate

For purposes of computing present value and interest under subsection (a)(2), the rate used shall be equal to 110 percent of the applicable Federal rate determined under section 1274(d) (compounded semiannually) which is in effect at the time the agreement is entered into with respect to debt instruments having a maturity equal to the term of the agreement.

(5) Related person

The term ''related person'' has the meaning given to such term by section 465(b)(3)(C).

(6) Certain options of lessee to renew not taken into account

Except as provided in regulations prescribed by the Secretary, there shall not be taken into account in computing the term of any agreement for purposes of this section any extension which is solely at the option of the lessee.

(f) Comparable rules where agreement for decreasing payments

Under regulations prescribed by the Secretary, rules comparable to the rules of this section shall also apply in the case of any agreement where the amount paid under the agreement for the use of property decreases during the term of the agreement.

(g) Comparable rules for services

Under regulations prescribed by the Secretary, rules comparable to the rules of subsection (a)(2) shall also apply in the case of payments for services which meet requirements comparable to the requirements of subsection (d). The preceding sentence shall not apply to any amount to which section 404 or 404A (or any other provision specified in regulations) applies.

(h) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations providing for the application of this section in the case of contingent payments.

(Added Pub. L. 98–369, div. A, title I, § 92(a), July 18, 1984, 98 Stat. 609; amended Pub. L. 99–514, title II, § 201(d)(8), title V, § 511(d)(2)(A), title VI,

§ 631(e)(10), title XVIII, §§ 1807(b), 1879(f)(1), Oct. 22, 1986, 100 Stat. 2141, 2248, 2274, 2816, 2906; Pub. L. 100–647, title I, §§ 1002(i)(2)(H), 1005(c)(10), Nov. 10, 1988, 102 Stat. 3371, 3392; Pub. L. 108–27, title III, § 302(e)(4)(B)(ii), May 28, 2003, 117 Stat. 764.)

AMENDMENTS

2003—Subsec. (c)(5)(C). Pub. L. 108–27 struck out '', 341(e)(12),'' after ''170(e)''.

1988—Subsec. (c)(5)(C). Pub. L. 100–647, § 1005(c)(10), made technical correction to directory language of Pub. L. 99–514, § 511(d)(2)(A). See 1986 Amendment note below.

Subsec. (e)(3)(A). Pub. L. 100–647, § 1002(i)(2)(H), at end of table inserted item relating to any railroad grading or tunnel bore.

1986—Subsec. (b)(4)(A). Pub. L. 99–514, § 1807(b)(2)(A), substituted ''statutory recovery period'' for ''statutory recover period''.

Subsec. (c)(4). Pub. L. 99–514, § 1807(b)(2)(B), substituted ''subsection (b)(4)(A)'' for ''subsection (b)(3)(A)''.

Subsec. (c)(5)(C). Pub. L. 99–514, § 631(e)(10), struck out ''453B(d)(2),'' after ''341(e)(12),''.

Pub. L. 99–514, § 511(d)(2)(A), as amended by Pub. L. 100–647, § 1005(c)(10), struck out ''163(d),'' after ''sections''.

Subsec. (d)(2). Pub. L. 99–514, § 1807(b)(2)(C), substituted ''section 1274(c)(4)(C)'' for ''section 1274(c)(2)(C)''.

Subsec. (e)(3)(A). Pub. L. 99–514, § 201(d)(8)(A), in amending subpar. (A) generally, included in table 7-year property, 15-year and 20-year property, and residential rental property and nonresidential real property having recovery periods of 7, 15, and 19 years, respectively, and struck out from table low-income housing, 15-year public utility property, and 19-year real property having recovery periods of 15, 15, and 19 years, respectively.

Pub. L. 99–514, § 1879(f)(1), substituted ''19-year real property'' and ''19 years'' for ''18-year real property'' and ''18 years'', respectively.

Subsec. (e)(3)(B). Pub. L. 99–514, § 201(d)(8)(A), in amending subpar. (B) generally, substituted in heading ''not depreciable under section 168'' for ''which is not recovery property'' and in text ''In the case of property to which section 168 does not apply, subparagraph (A) shall be applied as if section 168 applies to such property.'' for ''In the case of any property, which is not recovery property, subparagraph (A) shall be applied as if such property were recovery property.''

Subsec. (e)(5). Pub. L. 99–514, § 201(d)(8)(B), substituted ''section 465(b)(3)(C)'' for ''section 168(e)(4)(D)''.

Pub. L. 99–514, § 1807(b)(2)(D), substituted ''section 168(e)(4)(D)'' for ''section 168(d)(4)(D)''.

Subsec. (g). Pub. L. 99–514, § 1807(b)(1), inserted at end ''The preceding sentence shall not apply to any amount to which section 404 or 404A (or any other provision specified in regulations) applies.''

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 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

Amendment by section 201(d)(8) 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)(8) 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.

Amendment by section 511(d)(2)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 511(e) of Pub. L. 99–514, set out as a note under section 163 of this title.

Amendment by section 631(e)(10) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 1807(b) 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.

Pub. L. 99–514, title XVIII, § 1879(f)(2), Oct. 22, 1986, 100 Stat. 2906, provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 103 of Public Law 99–121.''

EFFECTIVE DATE

Pub. L. 98–369, div. A, title I, § 92(c), July 18, 1984, 98 Stat. 612, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section] shall apply with respect to agreements entered into after June 8, 1984.

''(2) EXCEPTIONS.—The amendments made by this section shall not apply—

''(A) to any agreement entered into pursuant to a written agreement which was binding on June 8, 1984, and at all times thereafter,

''(B) subject to the provisions of paragraph (3), to any agreement to lease property if—

''(i) there was in effect a firm plan, evidenced by a board of directors' resolution, memorandum of agreement, or letter of intent on March 15, 1984, to enter into such an agreement, and

''(ii) construction of the property was commenced (but such property was not placed in service) on or before March 15, 1984, and

''(C) to any agreement to lease property if—

''(i) the lessee of such property adopted a firm plan to lease the property, evidenced by a resolution of the Finance Committee of the Board of Directors of such lessee, on February 10, 1984,

''(ii) the sum of the present values of the rents payable by the lessee under the lease at the inception thereof equals at least $91,223,034, assuming for purposes of this clause—

''(I) the annual discount rate is 12.6 percent,

''(II) the initial payment of rent occurs 12 months after the commencement of the lease, and

''(III) subsequent payments of rents occur on the anniversary date of the initial payment, and

''(iii) during—

''(I) the first 5 years of the lease, at least 9 percent of the rents payable by the lessee under the agreement are paid, and

''(II) the second 5 years of the lease, at least 16.25 percent of the rents payable by the lessee under the agreement are paid.

Paragraph (3)(B)(ii)(II) shall apply for purposes of clauses (ii) and (iii) of subparagraph (C), as if, as of

the beginning of the last stage, the separate agreements were treated as 1 single agreement relating to all property covered by the agreements, including any property placed in service before the property to which the agreement for the last stage relates. If the lessor under the agreement described in subparagraph (C) leases the property from another person, this exception shall also apply to any agreement between the lessor and such person which is integrally related to, and entered into at the same time as, such agreement, and which calls for comparable payments of rent over the primary term of the agreement.

''(3) SCHEDULE OF DEEMED RENTAL PAYMENTS.—

''(A) IN GENERAL.—In any case to which paragraph (2)(B) applies, for purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the lessor shall be treated as having received or accrued (and the lessee shall be treated as having paid or incurred) rents equal to the greater of—

''(i) the amount of rents actually paid under the agreement during the taxable year, or

''(ii) the amount of rents determined in accordance with the schedule under subparagraph (B) for such taxable year.

''(B) SCHEDULE.—

''(i) IN GENERAL.—The schedule under this subparagraph is as follows:

"Portion of lease term:	Cumulative percentage of total rent deemed paid:
1st ⅕	10
2nd ⅕	25
3rd ⅕	45
4th ⅕	70
Last ⅕	100.

''(ii) OPERATING RULES.—For purposes of this schedule—

''(I) the rent allocable to each taxable year within any portion of a lease term described in such schedule shall be a level pro rata amount properly allocable to such taxable year, and

''(II) any agreement relating to property which is to be placed in service in 2 or more stages shall be treated as 2 or more separate agreements.

''(C) PARAGRAPH NOT TO APPLY.—This paragraph shall not apply to any agreement if the sum of the present values of all payments under the agreement is greater than the sum of the present value of all the payments deemed to be paid or received under the schedule under subparagraph (B). For purposes of computing any present value under this subparagraph, the annual discount rate shall be equal to 12 percent, compounded semiannually.''

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.

§ 468. Special rules for mining and solid waste reclamation and closing costs

(a) Establishment of reserves for reclamation and closing costs

(1) Allowance of deduction

If a taxpayer elects the application of this section with respect to any mining or solid waste disposal property, the amount of any deduction for qualified reclamation or closing costs for any taxable year to which such election applies shall be equal to the current reclamation or closing costs allocable to—

(A) in the case of qualified reclamation costs, the portion of the reserve property which was disturbed during such taxable year, and

(B) in the case of qualified closing costs, the production from the reserve property during such taxable year.

(2) Opening balance and adjustments to reserve

(A) Opening balance

The opening balance of any reserve for its first taxable year shall be zero.

(B) Increase for interest

A reserve shall be increased each taxable year by an amount equal to the amount of interest which would have been earned during such taxable year on the opening balance of such reserve for such taxable year if such interest were computed—

(i) at the Federal short-term rate or rates (determined under section 1274) in effect, and

(ii) by compounding semiannually.

(C) Reserve to be charged for amounts paid

Any amount paid by the taxpayer during any taxable year for qualified reclamation or closing costs allocable to portions of the reserve property for which the election under paragraph (1) was in effect shall be charged to the appropriate reserve as of the close of the taxable year.

(D) Reserve increased by amount deducted

A reserve shall be increased each taxable year by the amount allowable as a deduction under paragraph (1) for such taxable year which is allocable to such reserve.

(3) Allowance of deduction for excess amounts paid

There shall be allowed as a deduction for any taxable year the excess of—

(A) the amounts described in paragraph (2)(C) paid during such taxable year, over

(B) the closing balance of the reserve for such taxable year (determined without regard to paragraph (2)(C)).

(4) Limitation on balance as of the close of any taxable year

(A) Reclamation reserves

In the case of any reserve for qualified reclamation costs, there shall be included in gross income for any taxable year an amount equal to the excess of—

(i) the closing balance of the reserve for such taxable year, over

(ii) the current reclamation costs of the taxpayer for all portions of the reserve property disturbed during any taxable year to which the election under paragraph (1) applies.

(B) Closing costs reserves

In the case of any reserve for qualified closing costs, there shall be included in