shall be based on when the 1st building in such project is placed in service.

''(2) ONLY CASH AND OTHER PROPERTY TAKEN INTO ACCOUNT.—In determining the amount any person invests in (or is obligated to invest in) any interest, only cash and other property shall be taken into account.

''(3) COORDINATION WITH CREDIT.—No low-income housing credit shall be determined under section 42 of the Internal Revenue Code of 1986 with respect to any project with respect to which any person has been allowed any benefit under this section.''

[Pub. L. 99–509, title VIII, § 8073(b), Oct. 21, 1986, 100 Stat. 1965, provided that: ''The amendment made by subsection (a) [amending section 502 of Pub. L. 99–514, set out above] shall take effect as if included in section 502 of the Tax Reform Act of 1986 on the date of its enactment [Oct. 22, 1986].'']

§ 470. Limitation on deductions allocable to property used by governments or other tax-exempt entities

(a) Limitation on losses

Except as otherwise provided in this section, a tax-exempt use loss for any taxable year shall not be allowed.

(b) Disallowed loss carried to next year

Any tax-exempt use loss with respect to any tax-exempt use property which is disallowed under subsection (a) for any taxable year shall be treated as a deduction with respect to such property in the next taxable year.

(c) Definitions

For purposes of this section—

(1) Tax-exempt use loss

The term ''tax-exempt use loss'' means, with respect to any taxable year, the amount (if any) by which—

(A) the sum of—

(i) the aggregate deductions (other than interest) directly allocable to a tax-exempt use property, plus

(ii) the aggregate deductions for interest properly allocable to such property, exceed

(B) the aggregate income from such property.

(2) Tax-exempt use property

(A) In general

The term ''tax-exempt use property'' has the meaning given to such term by section 168(h), except that such section shall be applied—

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

(ii) as if section 197 intangible property (as defined in section 197), and property described in paragraph (1)(B) or (2) of section 167(f), were tangible property.

(B) Exception for partnerships

Such term shall not include any property which would (but for this subparagraph) be tax-exempt use property solely by reason of section 168(h)(6).

(C) Cross reference

For treatment of partnerships as leases to which section 168(h) applies, see section 7701(e).

(d) Exception for certain leases

This section shall not apply to any lease of property which meets the requirements of all of the following paragraphs:

(1) Availability of funds

(A) In general

A lease of property meets the requirements of this paragraph if (at all times during the lease term) not more than an allowable amount of funds are—

(i) subject to any arrangement referred to in subparagraph (B), or

(ii) set aside or expected to be set aside,

to or for the benefit of the lessor or any lender, or to or for the benefit of the lessee to satisfy the lessee's obligations or options under the lease. For purposes of clause (ii), funds shall be treated as set aside or expected to be set aside only if a reasonable person would conclude, based on the facts and circumstances, that such funds are set aside or expected to be set aside.

(B) Arrangements

The arrangements referred to in this subparagraph include a defeasance arrangement, a loan by the lessee to the lessor or any lender, a deposit arrangement, a letter of credit collateralized with cash or cash equivalents, a payment undertaking agreement, prepaid rent (within the meaning of the regulations under section 467), a sinking fund arrangement, a guaranteed investment contract, financial guaranty insurance, and any similar arrangement (whether or not such arrangement provides credit support).

(C) Allowable amount

(i) In general

Except as otherwise provided in this subparagraph, the term ''allowable amount'' means an amount equal to 20 percent of the lessor's adjusted basis in the property at the time the lease is entered into.

(ii) Higher amount permitted in certain cases

To the extent provided in regulations, a higher percentage shall be permitted under clause (i) where necessary because of the credit-worthiness of the lessee. In no event may such regulations permit a percentage of more than 50 percent.

(iii) Option to purchase

If under the lease the lessee has the option to purchase the property for a fixed price or for other than the fair market value of the property (determined at the time of exercise), the allowable amount at the time such option may be exercised may not exceed 50 percent of the price at which such option may be exercised.

(iv) No allowable amount for certain arrangements

The allowable amount shall be zero with respect to any arrangement which involves—

(I) a loan from the lessee to the lessor or a lender,

(II) any deposit received, letter of credit issued, or payment undertaking agreement entered into by a lender otherwise involved in the transaction, or

(III) in the case of a transaction which involves a lender, any credit support made available to the lessor in which any such lender does not have a claim that is senior to the lessor.

For purposes of subclause (I), the term ''loan'' shall not include any amount treated as a loan under section 467 with respect to a section 467 rental agreement.

(2) Lessor must make substantial equity investment

(A) In general

A lease of property meets the requirements of this paragraph if—

(i) the lessor—

(I) has at the time the lease is entered into an unconditional at-risk equity investment (as determined by the Secretary) in the property of at least 20 percent of the lessor's adjusted basis in the property as of that time, and

(II) maintains such investment throughout the term of the lease, and

(ii) the fair market value of the property at the end of the lease term is reasonably expected to be equal to at least 20 percent of such basis.

(B) Risk of loss

For purposes of subparagraph (A)(ii), the fair market value at the end of the lease term shall be reduced to the extent that a person other than the lessor bears a risk of loss in the value of the property.

(C) Paragraph not to apply to short-term leases

This paragraph shall not apply to any lease with a lease term of 5 years or less.

(3) Lessee may not bear more than minimal risk of loss

(A) In general

A lease of property meets the requirements of this paragraph if there is no arrangement under which the lessee bears—

(i) any portion of the loss that would occur if the fair market value of the leased property were 25 percent less than its reasonably expected fair market value at the time the lease is terminated, or

(ii) more than 50 percent of the loss that would occur if the fair market value of the leased property at the time the lease is terminated were zero.

(B) Exception

The Secretary may by regulations provide that the requirements of this paragraph are not met where the lessee bears more than a minimal risk of loss.

(C) Paragraph not to apply to short-term leases

This paragraph shall not apply to any lease with a lease term of 5 years or less.

(4) Property with more than 7-year class life

In the case of a lease—

(A) of property with a class life (as defined in section 168(i)(1)) of more than 7 years, other than fixed-wing aircraft and vessels, and

(B) under which the lessee has the option to purchase the property,

the lease meets the requirements of this paragraph only if the purchase price under the option equals the fair market value of the property (determined at the time of exercise).

(e) Special rules

(1) Treatment of former tax-exempt use property

(A) In general

In the case of any former tax-exempt use property—

(i) any deduction allowable under subsection (b) with respect to such property for any taxable year shall be allowed only to the extent of any net income (without regard to such deduction) from such property for such taxable year, and

(ii) any portion of such unused deduction remaining after application of clause (i) shall be treated as a deduction allowable under subsection (b) with respect to such property in the next taxable year.

(B) Former tax-exempt use property

For purposes of this subsection, the term ''former tax-exempt use property'' means any property which—

(i) is not tax-exempt use property for the taxable year, but

(ii) was tax-exempt use property for any prior taxable year.

(2) Disposition of entire interest in property

If during the taxable year a taxpayer disposes of the taxpayer's entire interest in tax-exempt use property (or former tax-exempt 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; Pub. L. 115–141, div. U, title IV, § 401(a)(120), Mar. 23, 2018, 132 Stat. 1190.)

Editorial Notes

AMENDMENTS

2018—Subsec. (d)(2)(B). Pub. L. 115–141 substituted ''subparagraph (A)(ii)'' for ''clause (ii)''.

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)''.

Statutory Notes and Related Subsidiaries

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

Editorial Notes

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