

income of a fund established after August 16, 1986.

(v) *Waiver of penalties.* For taxable years beginning prior to January 1, 1993, if a fund, account or trust is subject to section 468B(g) and the Internal Revenue Service does not challenge the method of taxation for transfers to, income earned by, and distributions made by, the fund pursuant to paragraph (b)(1)(i) or (b)(1)(ii) of this section, penalties will not be imposed in connection with the use of such method. For example, the penalties under section 6655 for failure to pay estimated tax, section 6651(a)(1) for failure to file a return, section 6651(a)(2) for failure to pay tax, section 6656 for failure to make deposit of taxes, and section 6662 for accuracy-related underpayments will generally not be imposed.

(2) *Election to apply qualified settlement fund rules—(i) In general.* The person that will be the administrator of a qualified settlement fund may elect to apply §§1.468B-1 through 1.468B-4 to transfers to, income earned by, and distributions made by, the fund in taxable years ending after August 16, 1986. The election is effective beginning on the first day of the earliest open taxable year of the qualified settlement fund. For purposes of this paragraph (b)(2), a taxable year is considered open if the period for assessment and collection of tax has not expired pursuant to the rules of section 6501. The election statement must provide the information described in paragraph (b)(2)(ii) of this section and must be signed by the person that will be the administrator. Such person must also provide each transferor of the qualified settlement fund with a copy of the election statement on or before March 15, 1993.

(ii) *Election statement.* The election statement must provide the following information—

(A) A legend, “§1.468B-5(b)(2) Election”, at the top of the first page;

(B) Each transferor’s name, address, and taxpayer identification number;

(C) The qualified settlement fund’s name, address, and employer identification number; and

(D) The date the qualified settlement fund was established within the meaning of §1.468B-1(j).

(iii) *Due date of returns and amended returns.* The election statement described in paragraph (b)(2)(ii) of this section must be filed with, and as part of, the qualified settlement fund’s timely filed tax return for the taxable year ended December 31, 1992. In addition, the qualified settlement fund must file an amended return that is consistent with the requirements of §§1.468B-1 through 1.468B-4 for any taxable year to which the election applies in which the fund took a position inconsistent with those requirements. Any such amended return must be filed no later than March 15, 1993, and must include a copy of the election statement described in paragraph (b)(2)(ii) of this section.

(iv) *Computation of interest and waiver of penalties.* For purposes of section 6601 and section 6611, the income tax return for each taxable year of the qualified settlement fund to which the election applies is due on March 15 of the year following the taxable year of the fund. For taxable years of a qualified settlement fund ending prior to January 1, 1993, the income earned by the fund is deemed to have been earned on December 31 of each taxable year for purposes of section 6655. Thus, the addition to tax for failure to pay estimated tax under section 6655 will not be imposed. The penalty for failure to file a return under section 6651(a)(1), the penalty for failure to pay tax under section 6651(a)(2), the penalty for failure to make deposit of taxes under section 6656, and the accuracy-related penalty under section 6662 will not be imposed on a qualified settlement fund if the fund files its tax returns for taxable years ending prior to January 1, 1993, and pays any tax due for those taxable years, on or before March 15, 1993.

[T.D. 8459, 57 FR 60994, Dec. 23, 1992]

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§ 1.469-1 General rules.

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(c)(8) Consolidated groups.

(c)(9)-(d)(1) [Reserved]

(2) Coordination with sections 613A(d) and 1211.

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- (d)(3)-(e)(1) [Reserved]
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- (iii) Average period of customer use.
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 - (C) Average period of customer use for class of property.
 - (D) Period of customer use.
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- (D) Lodging rented for convenience of employer.
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- (e)(3)(vii)-(e)(4)(iii) [Reserved]
- (iv) Definition of “working interest.”
- (e)(4)(v)-(vi) [Reserved]
- (5) Rental of dwelling unit.
- (e)(6)-(f)(3)(iii) [Reserved]
- (4) Carryover of disallowed deductions and credits.
 - (i) In general.
 - (ii) Operations continued through C corporations or similar entities.
 - (iii) Examples.
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- (4)(ii)(C) (no paragraph heading)
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- (4) Status and participation of members.
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§1.469-1T General rules (temporary).

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- (b) Taxpayers to whom these rules apply.
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 - (4) Effect of rules for other purposes.
 - (5) Special rule for oil and gas working interests.
 - (6) Treatment of disallowed losses and credits.
 - (7) Corporations subject to section 469.
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 - (9) Joint returns.
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 - (c)(7)(iv) through (vi) (no paragraph headings)
 - (d)(1)-(d)(2)(viii) [Reserved]
 - (d)(2)(ix) through (d)(2)(xii) (no paragraph headings)
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(f)(7)-(f)(9)(ii) [Reserved]

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(10) Coordination with section 163(d).

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(F) Coordination with section 163(d). [Reserved]

(G) Examples. [Reserved]

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- (5) Net income from certain property rented incidental to development activity.
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§ 1.469-3 Passive activity credit.

- (a)-(d) [Reserved]
- (e) Coordination with section 38(b).
- (f) Coordination with section 50.
- (g) [Reserved]

§ 1.469-3T Passive activity credit (temporary).

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§ 1.469-4 Definition of activity.

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- (3) Certain activities of limited partners and limited entrepreneurs.
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 - (h) Rules for grouping rental real estate activities for taxpayers qualifying under section 469(c)(7).

§ 1.469-5 Material participation.

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 - (k) Example (5).
 - (k) Examples (6)-(8). [Reserved]

§ 1.469-5T Material participation (temporary).

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 - (i) Participation satisfying standards not contained in section 469.
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 - (3) Coordination with rules governing the treatment of passthroughs entities. [Reserved]
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 - (k) Examples.

§ 1.469-6 Treatment of losses upon certain dispositions. [Reserved]

§ 1.469-7 Treatment of self-charged items of income and expense. [Reserved]

§ 1.469-8 Application of section 469 to trust, estates, and their beneficiaries. [Reserved]

§ 1.469-9 Rules for certain rental real estate activities.

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- (1) In general.
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§ 1.469-10 Application of section 469 to publicly traded partnerships. [Reserved]

§ 1.469-11 Effective date and transition rules.

- (a) Generally applicable effective dates.
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 - (3) Fresh starts under consistency rules.
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§ 1.469-1 General rules.

- (a)-(c)(7) [Reserved]
- (c)(8) Consolidated groups. Rules relating to the application of section 469 to consolidated groups are contained in paragraph (h) of this section.
- (c)(9)-(d)(1) [Reserved]

(d)(2) Coordination with sections 613A(d) and 1211. A passive activity deduction that is not disallowed for the taxable year under section 469 and the regulations thereunder may nonetheless be disallowed for the taxable year under section 613A(d) or 1211. The following example illustrates the application of this paragraph (d)(2):

Example. In 1993, an individual derives \$10,000 of ordinary income from passive activity X, no gains from the sale or exchange of capital assets or assets used in a trade or business, \$12,000 of capital loss from passive activity Y, and no income, gain, deductions, or losses from any other passive activity. The capital loss from activity Y is a passive activity deduction (within the meaning of § 1.469-2T(d)). Under section 469 and the regulations thereunder, the taxpayer is allowed \$10,000 of the \$12,000 passive activity deduction and has a \$2,000 passive activity loss for the taxable year. Since the \$10,000 passive activity deduction allowed under section 469 is a capital loss, such deduction is allowable for the taxable year only to the extent provided under section 1211. Therefore, the taxpayer is allowed \$3,000 of the \$10,000 capital loss under section 1211 and has a \$7,000 capital loss carryover (within the meaning of section 1212(b)) to the succeeding taxable year.

(d)(3)-(e)(1) [Reserved]

(e)(2) Trade or business activities. Trade or business activities are activities that constitute trade or business activities within the meaning of § 1.469-4(b)(1).

(e)(3)(i)-(e)(3)(ii) [Reserved]

(e)(3)(iii) Average period of customer use—(A) In general. For purposes of this paragraph (e)(3), the average period of customer use for property held in connection with an activity (the activity's average period of customer use) is the sum of the average use factors for each class of property held in connection with the activity.

(B) Average use factor. The average use factor for a class of property held in connection with an activity is the average period of customer use for that class of property multiplied by the fraction obtained by dividing—

(1) The activity's gross rental income attributable to that class of property; by

(2) The activity's gross rental income.

(C) Average period of customer use for class of property. In determining an activity's average period of customer use for a taxable year, the average period