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## **Reg. Section 1.469-11(b)(3)(iv)**

### Applicability date and transition rules

(a) Effective date and transition rules. Except as otherwise provided in this section-

(1) The rules contained in §§1.469-1, 1.469-1T, 1.469-2, 1.469-2T, 1.469-3, 1.469-3T, 1.469-4, but not §1.469-4(d)(6), 1.469-5 and 1.469-5T, apply for taxable years ending after May 10, 1992. The rules contained in §1.469-4(d)(6) apply for taxable years beginning on or after March 22, 2021. However, taxpayers and their related parties, within the meaning of sections 267(b) (determined without regard to section 267(c)(3)) and 707(b)(1), may choose to apply the rules in §1.469-4(d)(6) to a taxable year beginning after December 31, 2017, and before March 22, 2021, provided that those taxpayers and their related parties consistently apply all of the rules in the section 163(j) regulations as contained in T.D. 9905 (§§1.163(j)-0 through 1.163(j)-11, effective November 13, 2020) as modified by T.D. 9943 (effective January 13, 2021), and, if applicable, §§1.263A-9, 1.263A-15, 1.381(c)(20)-1, 1.382-1, 1.382-2, 1.382-5, 1.382-6, 1.383-0, 1.383-1, 1.469-9, 1.704-1, 1.882-5, 1.1362-3, 1.1368-1, 1.1377-1, 1.1502-13, 1.1502-21, 1.1502-79, 1.1502-91 through 1.1502-99 (to the extent they effectuate the rules of §§1.382-2, 1.382-5, 1.382-6, and 1.383-1), and 1.1504-4 contained in T.D. 9905 as modified by T.D. 9943, to that taxable year and each subsequent taxable year.

(2) The rules contained in 26 CFR 1.469-1T, 1.469-2T, 1.469-3T, 1.469-4T, 1.469-5T, 1.469-11T(b) and (c) (as contained in the CFR edition revised as of April 1, 1992) apply for taxable years beginning after December 31, 1986, and ending on or before May 10, 1992;

(3) The rules contained in §1.469-9, other than paragraph (b)(2), apply for taxable years beginning on or after January 1, 1995, and to elections made under §1.469-9(g) with returns filed on or after January 1, 1995;

(4) The rules contained in §1.469-9(b)(2), other than paragraphs (b)(2)(ii)(A) and (B), apply to taxable years beginning on or after November 13, 2020. Section 1.469-9(b)(2)(ii)(A) and (B) applies to taxable years beginning on or after March 22, 2021. However, taxpayers and their related parties, within the meaning of sections 267(b) (determined without regard to section 267(c)(3)) and 707(b)(1), may choose to apply the rules in §1.469-9(b)(2), other than paragraphs (b)(2)(ii)(A) and (B), to a taxable year beginning after December 31, 2017, and on or before November 13, 2020 and may choose to apply the rules in §1.469-9(b)(2)(ii)(A) and (B) to taxable years beginning after December 31, 2017, and before March 22, 2021, provided that those taxpayers and their related parties consistently apply all of the rules in the section 163(j) regulations contained in T.D. 9905 (§§1.163(j)-0 through 1.163(j)-11, effective November 13, 2020) as modified by T.D. 9943 (effective January 13, 2021), and, if applicable, §§1.263A-9, 1.263A-15, 1.381(c)(20)-1, 1.382-1, 1.382-2, 1.382-5, 1.382-6, 1.383-0, 1.383-1, 1.469-9,

1.704-1, 1.882-5, 1.1362-3, 1.1368-1, 1.1377-1, 1.1502-13, 1.1502-21, 1.1502-79, 1.1502-91 through 1.1502-99 (to the extent they effectuate the rules of §§1.382-2, 1.382-5, 1.382-6, and 1.383-1), and 1.1504-4, contained in T.D. 9905 as modified by T.D. 9943, to that taxable year and each subsequent taxable year.

(5) The rules contained in §1.469-7 apply for taxable years ending after December 31, 1986; and

(6) This section applies for taxable years beginning after December 31, 1986.

(b) Additional effective dates.

(1) Application of 1992 amendments for taxable years beginning before October 4, 1994. Except as provided in paragraph (b)(2) of this section, for taxable years that end after May 10, 1992, and begin before October 4, 1994, a taxpayer may determine tax liability in accordance with Project PS-1-89 published at 1992-1 C.B. 1219 (see §601.601(d)(2)(ii)(b) of this chapter).

(2) Additional transition rule for 1992 amendments. If a taxpayer's first taxable year ending after May 10, 1992, begins on or before that date, the taxpayer may treat the taxable year, for purposes of paragraph (a) of this section, as a taxable year ending on or before May 10, 1992.

(3) Fresh starts under consistency rules.

(i) Regrouping when tax liability is first determined under Project PS-1-89. For the first taxable year in which a taxpayer determines its tax liability under Project PS-1-89, the taxpayer may regroup its activities without regard to the manner in which the activities were grouped in the preceding taxable year and must regroup its activities if the grouping in the preceding taxable year is inconsistent with the rules of Project PS-1-89.

(ii) Regrouping when tax liability is first determined under §1.469-4. For the first taxable year in which a taxpayer determines its tax liability under §1.469-4, rather than under the rules of Project PS-1-89, the taxpayer may regroup its activities without regard to the manner in which the activities were grouped in the preceding taxable year and must regroup its activities if the grouping in the preceding taxable year is inconsistent with the rules of §1.469-4.

(iii) Regrouping when taxpayer is first subject to section 469(c)(7). For the first taxable year beginning after December 31, 1993, a taxpayer may regroup its activities to the extent necessary or appropriate to avail itself of the provisions of section 469(c)(7) and without regard to the manner in which the activities were grouped in the preceding taxable year.

(iv) Regrouping for taxpayers subject to section 1411.

(A) In general. If an individual, estate, or trust meets the Eligibility Criteria, as defined in paragraph (b)(3)(iv)(B) of this section, such individual, estate, or trust, in the first taxable year beginning after December 31, 2013, in which section 1411 would apply to such taxpayer, may regroup its activities without regard to the manner in which the



activities were grouped in the preceding taxable year. For this purpose, the determination of whether a taxpayer meets the Eligibility Criteria is made without regard to the effect of regrouping. The regrouping must be made in the manner prescribed by forms, instructions, or in other guidance on an original return for the taxable year for which the regrouping is done. A taxpayer that is an individual, estate, or trust may regroup its activities for any taxable year that begins during 2013, if the individual, estate, or trust meets the Eligibility Criteria for such year. A taxpayer may regroup activities only once pursuant to this paragraph (b)(3)(iv), and a regrouping made pursuant to this paragraph (b)(3)(iv) will apply to the taxable year for which the regrouping is done and all subsequent years.

(B) Eligibility criteria. The term Eligibility Criteria means that an individual, estate, or trust has net investment income (as defined in §1.1411-4) and such individual's (as defined in §1.1411-2(a)) modified adjusted gross income (as defined in §1.1411-2(c)) exceeds the applicable threshold in §1.1411-2(d) or such estate's or trust's (as defined in §1.1411-3(a)(1)(i)) adjusted gross income exceeds the amount described in §1.1411-3(a)(1)(ii)(B)(2).

(C) Consequences of amended returns and examination adjustments--

(1) Taxpayers first subject to section 1411. An individual, estate, or trust also may regroup activities, in the manner described in paragraph (b)(3)(iv)(A) of this section, on an amended return only if the changes reported on such amended return cause the taxpayer to meet the Eligibility Criteria for the first time beginning in the taxable year for which the amended return is applicable and that the taxable year is not closed by the period of limitations on assessments under section 6501. If the amended return is for a tax year that precedes a tax year for which a taxpayer had regrouped its activities pursuant to paragraph (b)(3)(iv)(A) of this section, the regrouping on such amended return must be consistent with the taxpayer's subsequent year's regrouping. If a regrouping on an amended return is inconsistent with a subsequent year's grouping, the subsequent year's grouping is invalid under § 1.469-4(e)(1) unless a material change in facts and circumstances occurred in the subsequent year such that the subsequent year's grouping constitutes a permissible regrouping under §1.469-4(e)(2). Similar rules also apply for any taxable year that begins during 2013.

(2) Taxpayers ceasing to be subject to section 1411. In the event a taxpayer regroups activities pursuant to paragraphs (b)(3)(iv)(A) or (C) of this section and it is subsequently determined that such taxpayer does not meet the Eligibility Criteria for the year of such regrouping, such regrouping will have no effect for that year and all future years. Appropriate adjustments should be made to reflect the voiding of the ineffective regrouping. However, notwithstanding the previous sentence, if an individual, estate, or trust meets the Eligibility Criteria in a subsequent year, such

taxpayer is deemed to treat such regrouping as being made in such subsequent year unless the taxpayer either regroups in a different manner (so long as such alternative regrouping is permissible under §1.469-4) or properly reflects the ineffective regrouping in the previous year. The subsequent year's regrouping may be made on an original or on an amended return for that year. This paragraph (b)(3)(iv)(C)(2) shall not apply if a taxpayer does not meet the Eligibility Criteria for the year of such regrouping as a result of the carryback of a net operating loss pursuant to section 172. Similar rules also apply for any taxable year that begins during 2013.

(3) Examples. The following examples illustrate the principles of paragraph (b)(3)(iv)(C) of this section. In each example, unless otherwise indicated, the taxpayer uses a calendar taxable year, the taxpayer is a United States citizen, and Year 1 is a taxable year in which section 1411 is in effect:

Example (1). In Year 1, X, a single individual, reports modified adjusted gross income (as defined in §1.1411-2(c)) of \$198,000 (including \$12,000 of net investment income (as defined in § 1.1411-4)); thus is not subject to 1411. After X filed his original return, X receives a corrected Form 1099-DIV, which increases his modified adjusted gross income (as defined in §1.1411-2(c)) and his net investment income by \$2,500. X files an amended return for Year 1 in Year 2 reporting modified adjusted gross income of \$200,500 and net investment income of \$14,500. Pursuant to paragraph (b)(3)(iv)(C)(1) of this section, X may regroup his passive activities on an amended return, because X now has MAGI above the applicable threshold amount and net investment income.

Example (2). Same facts as Example 1, except that the \$2,500 increase to modified adjusted gross income and net investment income was a result of an examination of X's Year 1 return. Pursuant to paragraph (b)(3)(iv)(C)(1) of this section, X may regroup his passive activities on an amended return.

Example (3). In Year 1, Y, a single individual reported modified adjusted gross income (as defined in §1.1411-2(c)) of \$205,000 and net investment income (as defined in §1.1411-4) of \$500. Pursuant to paragraph (b)(3)(iv)(A) of this section, Y regrouped his four passive activities, A, B, C, and D, into a single activity group. Prior to the Year 1 regrouping, Y had grouped A and B into one group, and treated each of C and D as separate activities. Y did not meet the Eligibility Criteria in any year prior to Year 1 or Year 2. In Year 3, Y's employer issued Y a corrected Year 1 Form W-2, which reduced Y's taxable wages by \$6,000. As a result, Y no longer meets the Eligibility Criteria in Year 1 because Y's modified adjusted gross income is now \$199,000. Therefore, Y's

Year 1 regrouping is no longer effective and the prior groupings are in effect (that is, Activity A and B are one group and Activity C and Activity D separately). Appropriate adjustments should be made to reflect the ineffective regrouping. However, if Y had a material change in facts and circumstances such that Y could regroup in Year 1 or a subsequent year, as applicable, by reason of §1.469-4(e)(2), then the regrouping will be deemed to occur. Y could designate a different regrouping for the year of the material change in facts and circumstances.

Example (4). Same facts as Example 3, except that Y met the Eligibility Criteria in Year 2. In this case, Y's Year 1 regrouping is no longer effective and Y must report his income consistent with the pre-Year 1 groupings. In Year 2, Y has three options. First, without any action by Y, Y's activities are regrouped as originally reported in Year 1. In this case, the regrouping from the Year 1 return is deemed to occur on the Year 2 return. This option is the default option. Second, pursuant to paragraph (b)(3)(iv)(C)(2) of this section, Y may file an amended return to report his income consistent with groupings in effect prior to Year 1. Third, Y may file an original or an amended return to regroup in a manner different from groupings in effect prior to Year 1 and different from the Year 1 groupings (for example, Y could choose to group Activity C and D into a single activity, thus causing Y to have two groups; Group A-B and Group C-D).

(D) Effective/applicability date. This section applies to taxable years beginning after December 31, 2013. However, taxpayers may apply this section to taxable years beginning after December 31, 2012.

(4) Certain investment credit property.

(i) The rules contained in §1.469-3(f) apply with respect to property placed in service after December 31, 1990 (other than property described in section 11813(c)(2) of the Omnibus Reconciliation Act of 1990 (P.L. 101-508)).

(ii) The rules contained in 26 CFR 1.469-3T(f) (as contained in the CFR edition revised as of April 1, 1992) apply with respect to property placed in service on or before December 31, 1990, and property described in section 11813(c)(2) of the Omnibus Reconciliation Act of 1990.

(c) Special rules.

(1) Application of certain income recharacterization rules and self-charged rules.

(i) Certain recharacterization rules inapplicable in 1987. No amount of gross income shall be treated under § 1.469-2T(f)(3) through (7) as income that is not from a passive activity for any taxable year of the taxpayer beginning before January 1, 1988.

(ii) Property rented to a nonpassive activity. In applying § 1.469-2(f)(6) or §1.469-2T(f)(6) to a taxpayer's rental of an item of property, the taxpayer's net

rental activity income (within the meaning of §1.469-2(f)(9)(iv) or §1.469-2T(f)(9)(iv)) from the property for any taxable year beginning after December 31, 1987, does not include the portion of the income (if any) that is attributable to the rental of that item of property pursuant to a written binding contract entered into before February 19, 1988.

(iii) Self-charged rules. For taxable years beginning before June 4, 1991-

(1) A taxpayer is not required to apply the rules in §1.469-7 in computing the taxpayer's passive activity loss and passive activity credit; and

(2) A taxpayer that owns an interest in a passthrough entity may use any reasonable method of offsetting items of interest income and interest expense from lending transactions between the passthrough entity and its owners or between identically-owned passthrough entities (as defined in §1.469-7(e)) to compute the taxpayer's passive activity loss and passive activity credit. Items from nonlending transactions cannot be offset under the self-charged rules.

(2) Qualified low-income housing projects. For a transitional rule concerning the application of section 469 to losses from qualified low-income housing projects, see section 502 of the Tax Reform Act of 1986.

(3) Effect of events occurring in years prior to 1987. The treatment for a taxable year beginning after December 31, 1986, of any item of income, gain, loss, deduction, or credit as an item of passive activity gross income, passive activity deduction, or credit from a passive activity, is determined as if section 469 and the regulations thereunder had been in effect for taxable years beginning before January 1, 1987, but without regard to any passive activity loss or passive activity credit that would have been disallowed for any taxable year beginning before January 1, 1987, if section 469 and the regulations thereunder had been in effect for that year. For example, in determining whether a taxpayer materially participates in an activity under § 1.469-5T(a)(5) (relating to taxpayers who have materially participated in an activity for five of the ten immediately preceding taxable years) for any taxable year beginning after December 31, 1986, the taxpayer's participation in the activity for all prior taxable years (including taxable years beginning before 1987) is taken into account. See §1.469-5(j) (relating to the determination of material participation for taxable years beginning before January 1, 1987).

(d) Examples. The following examples illustrate the application of paragraph (c) of this section:

Example (1). A, a calendar year individual, is a partner in a partnership with a taxable year ending on January 31. During its taxable year ending January 31, 1987, the partnership was engaged in a single activity involving the conduct of a trade or business. In applying section 469 and the regulations thereunder to A for calendar year 1987, A's distributive share of partnership items for the partnership's taxable year ending January 31, 1987, is taken into account. Therefore, under §1.469-2T(e)(1) and paragraph (c)(3) of this section, A's participation in the activity throughout the partnership's taxable year beginning February 1, 1986, and ending January 31, 1987, is taken into account for purposes of determining the character under section

469 of the items of gross income, deduction, and credit allocated to A for the partnership's taxable year ending January 31, 1987.

Example (2). B, a calendar year individual, is a beneficiary of a trust described in section 651 that has a taxable year ending January 31. The trust conducts a rental activity (within the meaning of §1.469-1T(e)(3)). Because the trust's taxable year ending January 31, 1987, began before January 1, 1987, section 469 and the regulations thereunder do not apply to the trust for that year. Section 469 and the regulations thereunder do apply, however, to B for B's calendar year 1987. Therefore, income of the trust from the rental activity for the trust's taxable year ending January 31, 1987, that is included in B's gross income for 1987 is taken into account in applying section 469 to B for 1987.