EQUIPMENT LEASING ASSOCIATION

TAX EXECUTIVES ROUNDTABLE
June 7, 2005

Gary Correll
Raleigh Klein
Section 470-Topics

- Statutory Provisions
- Purpose and Congressional Intent
- Application to Examples
- Transition Rules
- Partnerships
- Application to Examples
- Problems in Business Deals
- Compliance and Implications
§470 – “Limitations on deductions allocable to property used by governments or tax-exempts”

- Lessor’s net allowable deductions from tax-exempt user lease limited to net income from leased property
- Excess deductions carried forward to later years until “complete disposition” of lessor’s interest in property
- Exception for certain leases with maximum 20% defeasance, minimal lessee risk sharing, limited purchase option
Definitions

• “Tax Exempt Use Loss” is the sum of aggregate deductions directly allocable to tax exempt use property plus aggregate interest properly allocable over the aggregate income from the property.

• “Tax Exempt Use Property” is as defined in Section 168(h) Pickle rules for tangible property plus software and most intangible assets.

• “Former Tax Exempt Use Property” is any property that would have been covered by provision when bought.
Operation of Statute

- Tax Exempt Use Loss is not allowed to be used against other taxable income in year of generation but becomes a suspended loss similar to Section 469 passive activity loss rules.

- Suspended loss carried forward and treated as deduction with respect to that property for all succeeding years.

- Any remaining suspended loss finally allowed only in year when taxpayer disposes of entire interest in property.
Exception for Certain Leases

- Defeasance or similar security arrangements limited to 20% of lessor cost and 50% of any purchase option
- Lessor must have 20% non-protected equity at risk and there must be 20% residual value
- Lessee may not bear first 25% of loss or more than 50% of total loss exposure except short term leases
- No lessee fixed price purchase options except short lived property, aircraft or vessels
Section 470-Other Issues

- Restrictions carry over to any Former Tax Exempt Use Property
- Only disposition of entire interest in the property allows suspended loss to be used against any other income in that year
- Restrictions carry over to Section 1031 or 1033 replacement property
- Restrictions apply before Section 469 passive loss limitations
- Consider interaction with other AJCA lease changes such as service contract term and QTE
Why did they do this?

- Bad publicity cycle
- Need to stop a Federal budget drain
- Protect property of tax exempts
- Avoid capture of benefits by advisors
- Stop inefficient subsidy
- Protect the integrity of the tax system
- Also raise $26 billion
Application of 470-Simple Example

In 2006, Lessor Bank acquired a fleet of existing transit cars from municipal transit agency for $100m (through a grantor trust). Lessor invested $18m and financed remainder through non-recourse loan. Municipal transit agency leased cars back for 28 year term with a fixed price purchase option at expiration and a service contract obligation for 12 years if the purchase option is not exercised. Municipal transit agency defeased its obligations to pay rent. First year’s allocated rent is $12m, depreciation is $8m and interest on the debt is $10m. How do the 470 limitations apply?

Questions: What if this is single investor lease? What if there is a lessee prepayment of all rent on day one? What if there is no defeasance? No service contract?
Transition Rules

- Generally effective for leases entered into after March 12, 2004
- Property acquired through tax-free exchanges after 10/22/2004
- Intangibles and software after 10/3/2004
- Qualified Transportation Property
  - ***domestic property where FTA submission for approval showing value and description made after 6/30/2003 before 3/13/2004 and approved by FTA by 1/1/2006
Transition Questions

When will a subsequent modification to a lease cause the Section 470 restrictions to be applicable?

Does the exclusion of certain QTP assets support the treatment of prior deals?

Are QTP deals absolutely protected? See letter from staff. What about proposed elimination of transition?
Section 470 and Partnerships

- Section 470 looks to Section 168(h) to define tax exempt use property
- Section 168(h)(1)(a) talks about tangible property leased to a tax exempt
- Section 168(h)(5) requires testing at partner level for property leased to partnership
- Section 168(h)(6) requires all “property” owned by partnership with exempt partners will be treated as tax exempt use with certain exceptions
Section 470 and Partnerships

- Note that for a partnership there is no limitation to tangible property
- A partnership has no requirement of a lease
- Section 470 applies on a property by property basis
- Percentage affected is highest interest of exempt in any item of income or gain
Section 470 and Partnerships

Exceptions not always helpful—
  * Only qualified allocations

  * OK if income subject to regular tax or UBIT

  * Also covers tax exempt controlled C corporations
Section 470 and Partnerships

Example: Partnership formed with 75% taxable US corporations and with a 25% preferred limited partnership interest held by a state development authority for the purpose of building a manufacturing plant in an economically distressed area to be operated by the partnership. The state is entitled to get the first 95% of distributions from specified items of gross income until its capital is repaid then its interest drops to 5%. In the first few years the plant will operate at a loss.

Arguably 95% of the net loss flowing to taxable partners is subject to the restrictions of Section 470.
Section 470 and Partnerships

Example –
Bank operates a hedge fund business trust that invests in equity securities on a leveraged basis. Pension funds provide 45% of capital and taxable investors provide 54% with bank having 1% general managers interest with a 20% profits override for the first three years of the fund. Taxable losses are allocated only to taxable investors with subsequent restoration. For first year the fund only has interest deductions.

Is the loss allocated to the taxable investors subject to a Section 470 limitation?
Section 470 and Partnerships

Other Questions:

Real Estate—multiple leases or buildings in a partnership?

Securities—foreign partners in investment funds with leveraged non-income producing assets?

Other Pass-through entities also covered—REITS?, Trusts?

Effective Date—how does it apply with no new lease entered into by partnership?
Section 470 and Partnerships

After numerous meeting with taxpayers from leasing, securities, real estate industries and others, the Treasury finally agreed to waive partnership application of Section 470 limitations for year 2004 filings but has no guidance ready for this year.

Notice 2005-29 offers temporary relief
The qualified lease exceptions were designed to limit application to SILO type transactions and protect normal commercial leases. Hospitals and municipalities still need CAT scanners, school buses and computers. Certain short lived assets (7 year class life or less) were exempted from FMV purchase option restriction to be qualified exempt leases. However, statute uses class life rather than depreciation period so some high technology equipment (medical equipment) is 9 year class and is thus covered. Statute applies if you have a fixed price purchase option even if lease is limited to 60 months.

ELA seeking legislative fix to use recovery period for this purpose.
Section 470-Compliance

For leasing company, the limitations must be considered for original pricing and for tax reporting for each lease after March 11, 2004.

- Are there leases to tax-exempt lessors?
- Are they qualified or non-qualified leases?
- Are there any partnership lessees or co-investors in the company’s lease transactions?
- How are deductions allocated to the leased assets—especially interest?
- What is the impact of limitations?
Section 470-Other Issues

• How will specific states apply Section 470 limitations?

• How will suspended losses be tracked for later use?

• Can leases be restructured to avoid limitations through disposition, depreciation changes, rent allocation or separation of leverage?

• Can any tax-exempt partnership interests be converted into qualified allocation interests?

On October 7, 2004, the House passed a $138 billion tax package (H.R. 4520) that would repeal the foreign sales corporation (FSC)/extraterritorial income exclusion (ETI) provisions of the Internal Revenue Code, adopt a reduced tax rate for domestic manufacturing activities, and makes numerous changes to the U.S. international tax regime and other tax laws affecting domestic businesses.

Several items in the bill will have a major effect on leasing. The leasing restrictions alone are slated to raise some $26.58 billion over the next 10 years and represent the largest single revenue increase in the proposal after FSC/ETI repeal. The most important leasing items include (but are not limited to) the following:

Reform of Tax Treatment of Certain Leasing Arrangements and Limitation on Deductions Allocable to Property Used by Governments or Other Tax-Exempt Entities (“Tax-Exempt Lease”)

Current Law

Under the "Pickle Rule" of Code Section 168(g)(1)(B), depreciation allowed on certain property leased to a tax-exempt user is limited to the straight-line basis over a recovery period equal to the longer of the property's class life or 125% of the lease term.

New Provision

The provision would expand the types of property subject to these limits, alter the definition of lease term to include a service contract or similar obligation period, and establish new rules to limit net deductions associated with each Tax-Exempt Lease to the net income generated from such lease unless the Tax-Exempt Lease meets certain specified criteria.

First, the provision would expand the types of property subject to Pickle Rules to clarify that the restrictions apply to qualified technological equipment and to include computer software, separately acquired patents, copyrights, or similar property and Section 197 intangibles. The provision, however, would expand the limited exception for short-term leases of qualified technological equipment. For purposes of determining whether a lease of qualified technological equipment to a tax-exempt entity satisfies the current-law five-year short-term lease exception, the Act provides that the term of the lease does not include an option or options of the lessee to renew or extend the lease up to a maximum of 24 additional months, provided the rents under the renewal or extension are based upon fair market value determined at the time of the renewal or extension.

Second, in determining the length of the lease term for purposes of the Pickle Rules, the Act provides that the lease term includes the term of all service contracts (whether or not treated as a lease under Section 7701(e)) and other similar arrangements that follow a lease of property to a tax-exempt entity and that are part of the same transaction (or series of transactions) as the lease.

Third, the provision would also create a new set of limitations, similar to the rules of Section 469 relating to passive activity losses, which provide that if a taxpayer acts as lessor under a Tax-Exempt Lease, the taxpayer may not claim deductions from the lease transaction in excess of the taxpayer's gross income
from that particular lease for that tax year. Deductions from a lease would be determined by accumulating all directly allocable expenses and apportioned interest expense relating to the lease or the leased property. Excess deductions over gross income from the property would be suspended and carried forward to the next tax year. Any unclaimed suspended net deductions would be allowed as a loss in the final tax year when the lessor completely disposes of its interest in the property.

The deduction limitation rules would not apply to a Tax-Exempt Lease if it meets all the following characteristics:

1) Not more than an allowable amount of funds can be held under an escrow, defeasance, rent prepayment, or loan arrangement and thus not available to the lessee. The allowable amount is 20% of the lessor's original adjusted basis or 50% of any purchase option, unless a higher percentage is allowed by regulations based on credit-worthiness of the lessee but in no event more than 50%.

2) The lessor must have at least a 20% of original basis investment in the property.

3) The lessee may not bear more than a minimal risk of loss relating to the value of the property.

4) The lessee may not have a fixed price purchase option except for aircraft, vessels or property with no more than a seven-year class life.

Lastly, the provision would add Indian Tribes and their instrumentalities to the definition of tax-exempt users for purposes of the Pickle rules

Effective Date

The provision would be generally effective for leases entered into after March 12, 2004. It would not, however, apply to property located in the United States that is subject to a lease with regard to which a formal application (1) 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, (2) is approved by the Federal Transit Administration before January 1, 2005, and (3) includes a description and the fair market value of such property. Special rules are provided for former tax-exempt use property or like-kind exchanges of such property.

Implications

The anti-leasing proposals were added to the Act in response to the very public attacks by the IRS and the Senate Finance Committee on the perceived abuse of having a taxable lessor benefiting from depreciation and interest deductions generated by municipal and foreign governments or other tax-exempt entities. The provision would eliminate the economic benefits of various structures such as "SILO" and "QTE" leases that had been used to avoid the Pickle rules and has effectively shut down these types of transactions. However, the provision would apply only to leases entered into after March 12, 2004 or, in some cases to leases approved by the FTA up to December 31, 2005. The IRS has argued that these leasing structures should not be respected under current law. It is unclear how Congress could project a substantial revenue gain from eliminating the structures on a prospective basis or provide specific grandfathering rules unless the provision can be seen as at least implicitly acquiescing in the prior transactions.

Modifications to Treatment of Aircraft Leasing and Shipping Income

Current Law

Under current law, in general, the subpart F rules (Sections 951-964) require U.S. shareholders with a 10% or greater interest in a controlled foreign corporation (CFC) to include currently in income for U.S. tax purposes certain income of the CFC (subpart F income), without regard to whether the income is distributed to the shareholders (Section 951(a)(1)(A)). Subpart F income includes foreign base company shipping income (e.g., leasing of satellites for use in space; Section 954(f)).

Subpart F income also includes foreign personal holding company income (Section 954(c)). Subpart F foreign personal holding company income, however, does not include rents and royalties received by a CFC in the active conduct of a trade or business from unrelated persons (Section 954(c)(2)(A)). Treasury regulations provide certain types of rents are treated as derived in the active conduct of a trade or
business. These include rents derived from property that is leased as a result of the performance of marketing functions by the lessor if the lessor (through its own officers or employees located in a foreign country) maintains and operates an organization in such country that regularly engages in the business of marketing, or marketing and servicing, the leased property and that is substantial in relation to the amount of rents derived from the leasing of such property.

New Provision

The provision would repeal the subpart F rules relating to foreign base company shipping income. It would also amend the exception from foreign personal holding company income applicable to rents or royalties derived from unrelated persons in an active trade or business, by providing a safe harbor for rents derived from leasing an aircraft or vessel in foreign commerce. Such rents would be excluded from foreign personal holding company income if the active leasing expenses comprise at least 10% of the profit on the lease.

The safe harbor, however, would not prevent a lessor from otherwise showing that it actively carries on a trade or business. Thus, the requirements of Section 954(c)(2)(A) would be met if a lessor regularly and directly performs active and substantial marketing, remarketing, management, and operational functions with regard to the leasing of an aircraft or vessel (or component engines).

The Committee expects that Treasury will issue timely guidance to make conforming changes to existing regulations, including guidance that aircraft or vessel leasing activity that satisfies the requirements of Section 954(c)(2)(A) also satisfies the requirements for avoiding income inclusion under Sections 956 and 367(a).

Effective Date

The provision would be effective for tax years of foreign corporations beginning after December 31, 2004, and tax years of U.S. shareholders with or within which such tax years of foreign corporations end.

Implications

This provision is seen as a significant incentive to allow lease investors to set up foreign lease companies that carry on essentially financing business. As investment funds may no longer flow to ETI/FSC leases or to tax exempt leases, there may be alternatives available in the direct leasing subsidiaries.

Special Placed in Service Rule for Bonus Depreciation for Certain Property Subject to Syndication

Current Law

Under current law, in the case of any property that is originally placed in service by a person and that is sold to the taxpayer and leased back to such person by the taxpayer within three months after the date that the property was placed in service, the property is treated as originally placed in service by the taxpayer not earlier than the date that the property is used under the leaseback. The Working Families Tax Relief Act of 2004 (H.R. 1308) included a technical correction regarding the syndication of a lease by the lessor. It provides that if property is originally placed in service by a lessor (including by operation of the special rule for self-constructed property), and such property is sold within three months after the date that the property was placed in service, and the user of such property does not change, then the property is treated as originally placed in service by the taxpayer not earlier than the date of such sale.

New Provision

The Act provides a special rule in the case of multiple units of property subject to the same lease. In such cases, property would qualify as placed in service on the date of sale if it is sold within three months after the final unit is placed in service, so long as the period between the time the first and last units are placed in service does not exceed 12 months.

Effective Date

The provision would be effective for property sold after June 4, 2004.

Implications
This industry-requested change would further expand the ability of lease packagers to resell lease investments including mass asset fleet leases to new investors who may be better positioned to use the bonus depreciation benefits.

**Recovery Period for Depreciation of Certain Leasehold Improvements**

**Current Law**

Under current law, depreciation allowances for improvements made on leased property are determined under MACRS, even if the MACRS recovery period assigned to the property is longer than the term of the lease. This rule applies regardless of whether the lessor or the lessee places the leasehold improvements in service.

**New Provision**

The Act would provide a statutory 15-year recovery period for qualified leasehold improvement property placed in service before January 1, 2006. The provision would require that qualified leasehold improvement property be recovered using the straight-line method. (For additional discussion, see the Accounting Methods & Inventories Alert dated October 7, 2004, and the Real Estate Alert dated October 8, 2004.)

**Effective Date**

The provision would be effective for property placed in service after the date of enactment.

**Implications**

The real estate industry had long seen depreciation of lease improvements as unfair to tenants. The provision would increase the advantage to have tenants fund their own leasehold improvements or to match landlord expenses to specific leases.

**Transition Rules for ETI and FSC Leases**

The ETI and FSC regimes would be repealed for transactions after December 31, 2004; however transition relief would be provided for two years and complete relief for binding contracts in effect on September 17, 2003, and at all times thereafter. Many taxpayers entered into long-term export leases of aircraft, medical equipment or other export property over the last 15-20 years. The provision provides that the existing FSC or ETI law will continue to apply to those leases. It also provides that the prior law will apply to lease purchase options, replacement options, or renewal options enforceable against lessor or their successors.

**Implications**

The leasing industry was very concerned about the effect of ETI/FSC repeal on long-term export leases that had been entered into many years ago and assumed exclusion benefits in the original pricing. The provision responded to those concerns by providing complete relief without a fixed limitation on the time period.

If you have questions regarding this Alert, please contact Isaac Sperka (212/773-8490), Glenn Johnson (202/327-6687), Tom Helton (202/327-5891), or Gary Correll (202/327-6646) in the Leasing Group.

*This Alert was prepared by the Leasing Group to present time-sensitive information affecting our clients. Recipients of this publication should promptly review and consider the effect of its contents on the clients they serve.*

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Exempt Organizations & Government Entities; Leasing; Partnerships and Joint Ventures; Real Estate

Section 470 Loss Limitations Concerning Partnerships With Tax-Exempt and Taxable Partners May Also Apply to Numerous Non-Lease Situations

There appears to be a significant risk that the new Code Section 470, "Limitation on Deductions Allocable to Property Used by Governments or Other Tax-Exempt Entities," may potentially apply to a wide range of investment partnerships such as hedge funds, real estate investment partnerships, or similar pass-through entities having both taxable and tax-exempt partners that would not normally be considered a target of the restrictions that were designed to limit certain tax-exempt lease transactions deemed abusive by the IRS.

Potential Statutory Problem

New Section 470 limits net deductions arising from "tax-exempt use property" to the income arising from such property until the taxpayer completely disposes of its interest in the property using an approach similar to the Section 469 passive loss limitation rules unless the safe harbor lease tests are met.

Tax-exempt use property is defined in the statute by reference to Section 168(h) with expansion to cover certain intangible assets, QTE, and short-term lease property. However, property included solely as a result of the rules of Section 168(h)(6) is excluded if it produces Section 42 (low-income housing) credits or Section 47 (rehabilitation) credits. Thus, by clear reading of the statute and by negative implication confirmation from the carve-out (i.e., only Section 42 and 47 are excluded and the remaining assets are included), Section 470 limitations are intended to apply to tax-exempt use property created as a result of the application of the rules of Section 168(h)(6).

Section 168(h)(6) generally treats any property, not otherwise tax-exempt use property but owned by a partnership that has both taxable and tax-exempt partners (including tiered arrangements), as tax-exempt use property to the extent of the tax-exempt partners' deemed proportionate share of such property. The proportionate share is generally the tax-exempt partner's highest percentage interest in any item of income or gain. Section 168(h)(6) is not limited to leased property or to depreciable tangible property but applies to any "property" without further qualification. There are exceptions for partners otherwise subject to unrelated business income taxation on the property.

However, Section 168(h)(6)(B) provides an exception if the tax-exempt partner has only "Qualified Allocations" with respect to its interest in the partnership. Such allocations must be "consistent with such entity's being allocated the same distributive share of each item of income, gain, loss, deduction, credit, and basis and such share remains the same during each period the entity is a partner in the partnership" and such allocation has "substantial economic effect within the meaning of Section 704(b)(2)." In many, if not most, taxable/tax-exempt partnership investment entities there is some special allocation of deductions or credits to taxables or of gross income to a manager's interest, etc. that would cause the allocations to fail the qualified allocation exception.
Section 470 generally applies to "leases entered into after March 12 2004" with a transition rule for certain transportation leases but is silent on any other effective date. However, there is no effective date directly addressing partnerships; thus, the Section 470 limitations would normally be considered effective at the date of enactment and would apply to existing as well as newly formed partnerships.

Implications

Based on this analysis, it appears that the Section 470 loss limitations could apply to a wide range of losses allocated to a taxable partner in any partnership-like vehicle also having tax-exempt partners, including pension funds, any foreign person, or any government or instrumentality and when (i) all allocations are not completely "straight-up" or (ii) the income is not otherwise subject to tax in the hands of the partner. As an example, if a real estate investment partnership has a pension fund as a preferred return partner (and the income is not UBTI) and the activity otherwise produces taxable losses that are passed to taxable investors, Section 168(h)(6) already operated to limit the depreciation allowable to the partnership by imposing the Alternative Depreciation System as applied to tax-exempt use property ("ADS"). Now, Section 470 would appear to further limit the overall loss produced after the application of ADS to the extent of the percentage of the tax-exempt partners' proportionate interest. This could not be cured by allocation provisions. The limitation is a property-by-property limitation; thus, netting of income and loss in the partnership from different properties does not seem appropriate.

Arguably, the effective date language indicates that Congress only intended Section 470 to apply when a "new lease" is entered into after the March 12, 2004 date but the direct inclusion of Section 168 in its entirety, with a limited carve-out only for credit partnerships, which otherwise have no requirement for a lease, seems to undercut this argument.

Limiting the application of Section 470 would seem to need a technical correction to fix assuming that this is an unintended result not contemplated by Congress when the statute was passed. Partnership effective date issues and aggregation of properties may be addressed by administrative guidance.

For further information on this issue please contact one of the members of the Leasing Group: Gary Correll (202-327-6646), Thomas Helton (202-327-5891), Glenn Johnson (202-327-6687) or Isaac Sperka (212-773-8490).

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Service Issues Temporary Relief From Section 470 for Certain Partnerships and Pass-Through Entities

Notice 2005-29, issued March 10, 2005, provides partnerships and other pass-through entities ("Passthroughs") a reprieve from the application of Section 470 for tax years beginning before January 1, 2005. For the tax year of Passthroughs that began before January 1, 2005, the IRS will not apply Section 470 to disallow losses associated with property that is treated as tax-exempt use property solely under Section 168(h)(6). Section 470 may apply for the 2004 tax year to certain property leased by a Passthrough that, for example, might be treated as tax-exempt use property under Section 470 by application of Section 168(h)(1).

Background

Section 470, enacted as part of the American Jobs Creation Act of 2004 (AJCA), limits deductions on "tax-exempt use property" by deferring any net losses on such property. Under Section 470(c)(2), "tax-exempt use property" generally has the meaning given to such term by Section 168(h) with certain modifications. Under Section 168(h)(1)(A), certain tangible property can be treated as "tax-exempt use property" if it is leased to a tax-exempt entity. Under Section 168(h)(6), property held by a Passthrough can be treated as tax-exempt use property even if it is not leased to a tax-exempt entity.

AJCA Section 849 provides that the provisions of Section 470 generally apply to leases entered into after March 12, 2004. The AJCA does not contain specific effective date language for property that is treated as tax-exempt use property solely under Section 168(h)(6) (e.g., partnership property that is not leased to a tax-exempt person). Neither the statute nor the legislative history provides guidance on how to apply Section 470 to Passthroughs. The absence of specific effective date language and the lack of guidance on the scope and applicability of Section 470 to tax-exempt use property under Section 168(h)(6) created considerable uncertainty in preparing tax returns for 2004 tax years. Because of this uncertainty, representatives of E&Y and the other Big Four had a number of meetings and conversations with staff members from the House and Senate tax committees, the Joint Committee of Taxation, Treasury, and the IRS to discuss questions regarding the potential scope of Section 470 and to provide comments regarding the administrative difficulties in applying Section 470 to Passthroughs. The IRS issued Notice 2005-29 on March 10, 2005, following these meetings.

Notice 2005-29

The notice provides that for the tax year of Passthroughs that began before January 1, 2005, the IRS will not apply Section 470 to disallow losses associated with property that is treated as tax-exempt use property solely under Section 168(h)(6).
Implications

While the notice is welcome news for 2004 tax years, it leaves many unanswered questions for the situations it does not cover. In particular, the notice provides no direct guidance on the scope and application of Section 470 to Passthroughs' 2005 tax years and beyond. In that regard, the IRS requests comments on the application of Section 470 to property treated as tax-exempt use property under Section 168(h)(6). Specifically, the IRS requests comments on (i) the aggregation of properties; (ii) the allocation of deductions and income among properties; (iii) the application of Section 470 to pass-through entities other than partnerships; and (iv) the application of Section 470 at either the entity level or the owner level.

The above items are issues that E&Y representatives and others have discussed with the government officials over the past few months. It is possible that Congress and Treasury will resolve some of these issues by amending the statute or adopting further administrative guidance. It is not clear, however, if Congress and Treasury will act on any of these issues on a timely basis. We expect additional Alerts will be issued addressing these and other issues.

We are working with industry groups in discussions with government officials regarding the application of Section 470 in 2005 and future years. Please call Gary Correll (202/327-6646); Isaac Sperka (212/773-8490); Tom Helton (202/327-5891); or Glenn Johnson (202/327-6687) for additional information.

Footnotes

1 Deferred net losses can be deducted in future years under rules similar to those under Section 469.

2 Section 470(c) specifically provides that property that is treated as tax-exempt use property solely as a result of the rules of Section 168(h)(6) is not subject to Section 470 if such property produces Section 42 (low-income housing) credits or Section 47 (rehabilitation) credits. This type of property is often held by partnerships and generally is tax-exempt use property under Section 168(h)(6) because the partnership's allocations typically are not "qualified allocations" under Section 168(h)(6)(B).

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