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## **Internal Revenue Code Section 163(d)(5)**

### **Interest**

(a) General rule.

There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness.

(b) Installment purchases where interest charge is not separately stated.

(1) General rule.

If personal property or educational services are purchased under a contract-

(A) which provides that payment of part or all of the purchase price is to be made in installments, and

(B) in which carrying charges are separately stated but the interest charge cannot be ascertained,

then the payments made during the taxable year under the contract shall be treated for purposes of this section as if they included interest equal to 6 percent of the average unpaid balance under the contract during the taxable year. For purposes of the preceding sentence, the average unpaid balance is the sum of the unpaid balance outstanding on the first day of each month beginning during the taxable year, divided by 12. For purposes of this paragraph, the term "educational services" means any service (including lodging) which is purchased from an educational organization described in section 170(b)(1)(A)(ii) and which is provided for a student of such organization.

(2) Limitation.

In the case of any contract to which paragraph (1) applies, the amount treated as interest for any taxable year shall not exceed the aggregate carrying charges which are properly attributable to such taxable year.

(c) Redeemable ground rents.

For purposes of this subtitle, any annual or periodic rental under a redeemable ground rent (excluding amounts in redemption thereof) shall be treated as interest on an indebtedness secured by a mortgage.

(d) Limitation on investment interest.

(1) In general.

In the case of a taxpayer other than a corporation, the amount allowed as a deduction under this chapter for investment interest for any taxable year shall not exceed the net investment income of the taxpayer for the taxable year.

(2) Carryforward of disallowed interest.

The amount not allowed as a deduction for any taxable year by reason of paragraph (1) shall be treated as investment interest paid or accrued by the taxpayer in the succeeding taxable year.

(3) Investment interest.

For purposes of this subsection -

(A) In general. The term "investment interest" means any interest allowable as a deduction under this chapter (determined without regard to paragraph (1) ) which is paid or accrued on indebtedness properly allocable to property held for investment.

(B) Exceptions. The term "investment interest" shall not include-

(i) any qualified residence interest (as defined in subsection (h)(3) ), or

(ii) any interest which is taken into account under section 469 in computing income or loss from a passive activity of the taxpayer.

(C) Personal property used in short sale. For purposes of this paragraph , the term "interest" includes any amount allowable as a deduction in connection with personal property used in a short sale.

(4) Net investment income.

For purposes of this subsection -

(A) In general. The term "net investment income" means the excess of-

(i) investment income, over

(ii) investment expenses.

(B) Investment income. The term "investment income" means the sum of-

(i) gross income from property held for investment (other than any gain taken into account under clause (ii)(I) ),

(ii) the excess (if any) of-

(I) the net gain attributable to the disposition of property held for investment, over

(II) the net capital gain determined by only taking into account gains and losses from dispositions of property held for investment, plus

(iii) so much of the net capital gain referred to in clause (ii)(II) (or, if lesser, the net gain referred to in clause (ii)(I) ) as the taxpayer elects to take into account under this clause.

Such term shall include qualified dividend income (as defined in section 1(h)(11)(B) ) only to the extent the taxpayer elects to treat such income as investment income for purposes of this subsection.

(C) Investment expenses. The term "investment expenses" means the deductions allowed under this chapter (other than for interest) which are directly connected with the production of investment income.

(D) Income and expenses from passive activities. Investment income and investment expenses shall not include any income or expenses taken into account under section 469 in computing income or loss from a passive activity.

(E) Repealed.



(5) Property held for investment.

For purposes of this subsection -

(A) In general. The term "property held for investment" shall include-

(i) any property which produces income of a type described in section 469(e)(1) , and

(ii) any interest held by a taxpayer in an activity involving the conduct of a trade or business-

(I) which is not a passive activity, and

(II) with respect to which the taxpayer does not materially participate.

(B) Investment expenses. In the case of property described in subparagraph (A)(i) , expenses shall be allocated to such property in the same manner as under section 469 .

(C) Terms. For purposes of this paragraph , the terms "activity", "passive activity", and "materially participate" have the meanings given such terms by section 469 .

(6) Repealed.

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