

Internal Revenue Service, Treasury

§ 7.48-2

- and television films placed in service in a taxable year beginning before January 1, 1975.
- 7.48-3 Election to apply the amendments made by sections 804 (a) and (b) of the Tax Reform Act of 1976 to property described in section 50(a) of the Code.
- 7.57(d)-1 Election with respect to straight line recovery of intangibles.
- 7.105-1 Questions and answers relating to exclusions of certain disability income payments.
- 7.105-2 Substantial gainful activity.
- 7.465-1 Amounts at risk with respect to activities begun prior to effective date; in general.
- 7.465-2 Determination of amount at risk.
- 7.465-3 Allocation of loss for different taxable years.
- 7.465-4 Insufficient records.
- 7.465-5 Examples.
- 7.704-1 Partner's distributive share.
- 7.936-1 Qualified possession source investment income.
- 7.999-1 Computation of the international boycott factor.
- 7.6039A-1 Information regarding carryover basis property acquired from a decedent.
- 7.6041-1 Return of information as to payments of winnings from bingo, keno, and slot machines.

AUTHORITY: 26 U.S.C. 7805, unless otherwise stated.

§ 7.48-1 Election to have investment credit for movie and television films determined in accordance with previous litigation.

(a) *Generally.* Under section 804(c)(3) of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1595), any taxpayer who filed an action in any court of competent jurisdiction before January 1, 1976, for a determination of such taxpayer's rights to investment credit under section 38 of the Internal Revenue Code of 1954 with respect to any film placed in service in any taxable year beginning before January 1, 1975, may elect to have investment credit on all films placed in service in taxable years beginning before January 1, 1975, (except those subject to an election under section 804(e)(2) of the Act), determined as though section 804 of the Act (except section 804(c)(3) of the Act) had not been enacted.

(b) *Manner of making the election.* The election allowed by section 804(c)(3) of the Act may be made by a notification in the form of a letter signed by the taxpayer or an authorized representative of the taxpayer stating:

(1) The taxpayer's name, address, and identification number;

(2) The taxable years in which the films were placed in service with respect to which the election shall apply; and

(3) The court in which the litigation was commenced and information adequate to identify the particular litigation, for example, the names of the litigants, the date the suit was commenced, and the court case or docket number of the litigation.

The letter should be sent to the Deputy Commissioner of Internal Revenue, Attention: CC:RL:Br2, Room 4617, 1111 Constitution Avenue, N.W., Washington, DC 20224.

(c) *Time for making the election.* The election under section 804(c)(3) of the Act must be made not later than January 3, 1977. If mailed, the cover containing the notification of such election must be postmarked not later than January 3, 1977.

(d) *Revocation of election.* An election under section 804(c)(3) of the Act, once made, shall be irrevocable.

[T.D. 7449, 41 FR 56629, Dec. 29, 1976]

§ 7.48-2 Election of forty-percent method of determining investment credit for movie and television films placed in service in a taxable year beginning before January 1, 1975.

(a) *General rule.* Under section 804(c)(2) of the Tax Reform Act of 1976 (90 Stat. 1595), taxpayers who placed movie or television films (hereinafter referred to as films and tapes) in service during taxable years beginning before January 1, 1975, may elect to have their investment credit on all such films and tapes determined under section 46(c) of the Code using an amount equal to 40 percent of aggregate production costs in lieu of the basis of such property. If the election is made, 100 percent is the applicable percentage used in determining qualified investment under section 46(c) of the Code regardless of actual useful life. The election can be made only with respect to qualified films and tapes that are new section 38 property and the investment credit is allowed only to the extent that a taxpayer has an ownership interest in the film or tape. No investment credit is allowed under section 804(c)(2)

of the Act on any film or tape that is not section 38 property or that was produced and shown exclusively outside of the United States. Thus, no election may be made under this section with respect to a film or tape which is suspension period property to which section 48(h) applies or to a film or tape which is termination period property to which section 49(a) applies. Any investment credit taken on any film or tape subject to the election is not subject to recapture because of an early disposition or because a film or tape otherwise ceases to be section 38 property under section 47(a) of the Code. Thus, there will be no recapture because a film or tape is used outside the United States under section 48(a)(2) of the Code or section 804(c)(1)(C) of the Act, or because of any disposition under section 47(a)(7)(B) of the Code.

(b) *Time and manner of making an election*—(1) *Time for making the election.* The election under section 804(c)(2) of the Act must be made not later than April 25, 1977.

(2) *Manner of making the election.* An election under this section must be made by filing amended income tax returns for each taxable year beginning before January 1, 1975, in which films and tapes subject to the election were placed in service, together with a statement signed by the taxpayer containing the information described below. The amended returns and the statement must be filed with the district director having audit jurisdiction over the last return filed to which the election relates. Each amended return shall contain a schedule listing by name all films and tapes placed in service during the year to which the amended return relates and setting forth all computations necessary to determine the aggregate production costs of each such film or tape listed and the ownership interest of the taxpayer in each film or tape listed. In the case of a taxpayer which is a partner, shareholder of an electing small business corporation, or beneficiary of a trust or estate, such computations must be adequate to determine the ownership interest of the partnership, electing small business corporation, or trust or estate in each such film or tape, (a taxpayer which is a partner, shareholder,

or beneficiary may satisfy the requirements of the preceding sentence by attaching to his amended return a copy of an amended return, if one is filed, of the partnership, electing small business corporation, or trust or estate which sets forth computations necessary to determine the ownership interest of the entity in each such film or tape.) No amended return need be filed for a taxable year if application of the election to films and tapes placed in service during that year would not affect tax liability for any taxable year.

The statement shall contain the following information:

(i) The taxpayer's name and taxpayer identification number (under section 6109 of the Code).

(ii) A statement that the taxpayer is making the election under section 804(c)(2) of the Act.

(iii) A statement that the taxpayer agrees that the period for assessment and collection under section 6501 of the Code will remain open until December 31, 1978, solely with respect to adjustments of tax liability attributable to investment credit allowed on films and tapes placed in service in each year covered by the election. Unless the district director notifies the taxpayer within 7 days of receipt of the statement that such extension is denied, it will be presumed that the district director consents to such extension. Of course, the period covered by this statement may be extended beyond December 31, 1978 by mutual agreement. This statement does not shorten the regular statutory period for any year or take precedence over a previous or subsequent agreement with the Internal Revenue Service extending the statutory period for any year.

(iv) A list of the addresses used by the taxpayer on each return filed during each taxable year subject to the election.

(v) A statement that the taxpayer consents to join in judicial proceedings to determine the investment credit allowable and entitlement to investment credit on any film or tape subject to the election, which meets all of the requirements set forth in paragraph (b)(3) of this section.

(vi) A statement as to whether an election has been made by the taxpayer

under section 804(e)(2) of the Act for films and tapes which are property described in section 50(a) of the Code which were placed in service in taxable years beginning before January 1, 1975.

(vii) A list by name of all films or tapes placed in service during the years to which the election relates.

(viii) With respect to each film or tape listed in paragraph (b)(2)(vii) of this section, a list of all producers, distributors, and persons with a participation interest (with addresses where available).

(ix) In the case of an election made by a partner, shareholder of an electing small business corporation (as defined in section 1371(b) of the Code), or beneficiary, a statement indicating the name, taxpayer identification number, and address for tax return purposes of the respective partnership, electing small business corporation, or trust or estate.

(3) *Consent to join in judicial proceedings.* No election may be made by any taxpayer unless the statement made under paragraph (b)(2)(v) of this section provides that the taxpayer shall:

(i) Treat the determination of the investment credit allowable on each film or tape subject to an election as a separate cause of action;

(ii) Make all reasonable efforts necessary to join in or intervene in any judicial proceeding in any court for determining the person entitled to, and the amount of, the investment credit allowable with respect to any film or tape covered by the election after receiving notice from the Commissioner of Internal Revenue or his delegate indicating that a conflicting claim to the investment credit for such film or tape is being asserted in such court by another person; and

(iii) Consent to revocation of the election by the Commissioner of Internal Revenue or his delegate with respect to all films and tapes placed in service in taxable years for which the election applies, if the taxpayer fails to make all reasonable efforts necessary to join in or intervene in any judicial proceeding under paragraph (b)(3)(ii) of this section.

(4) *Who makes the election.* The election must be made separately by each

person who has an ownership interest. However, where a film or tape is owned by a partnership, electing small business corporation (as defined in section 1371(b) of the Code), or trust or estate, the election must be made separately by each partner, shareholder or beneficiary. The election is not to be made by a partnership or electing small business corporation, and is to be made by a trust or estate only if the trust or estate in determining its tax liability would be allowed investment credit on a film or tape subject to the election. The election of any partner, shareholder, beneficiary or trust or estate shall be effective regardless of whether any related partner, shareholder, beneficiary, or trust or estate makes the election.

(5) *Additional time to perfect election.* A taxpayer that by April 25, 1977, files a statement containing the information described in paragraph (b)(2) (i) through (v) of this section shall be deemed to have made a timely election under paragraph (b)(2) of this section if by July 5, 1977, the taxpayer has complied with all of the requirements of paragraph (b)(2) of this section. If a taxpayer demonstrates to the satisfaction of the district director that it is unable to meet the July 5, 1977, date even though it has made a good faith effort to do so, the district director may at his discretion extend that date to no later than October 4, 1977, for that taxpayer. Requests for extensions of the July 5, 1977, date should be addressed to the district director with whom the statement was filed.

(c) *Revocation of election—(1) Revocation by taxpayer.* (i) Except as provided in paragraph (c)(1)(ii) of this section, an election made under section 804(c)(2) of the Act may not be revoked by a taxpayer unless consent to revoke the election is obtained from the Commissioner of Internal Revenue or his delegate. Application for consent to revoke the election will be accepted only if permanent regulations are issued which contain rules which may not reasonably have been anticipated by taxpayers at the time the election was made. Any permanent regulations will provide a reasonable period of time within which taxpayers will be permitted to apply for consent to revoke

the election and will allow revocation (where revocation is not barred by the limitations on credit or refund inspection 6511 of the Code) in the event of a determination by the Commissioner of Internal Revenue or his delegate that such permanent regulations contain provisions that may not reasonably have been anticipated by taxpayers at the time of making such election.

(ii) An election properly made under section 804(e)(2) of the Act, to have sections 48(k) and 47 (a)(7) of the Code apply to films and tapes which are property described in section 50(a) of the Code and which were placed in service in taxable years beginning before January 1, 1975, shall automatically revoke any election under section 804(c)(2) of the Act with respect to such films and tapes. Such revocation does not require the consent of the Commissioner of Internal Revenue or his delegate.

(2) *Revocation by Commissioner.* The Commissioner of Internal Revenue or his delegate shall revoke an election made under section 804(c)(2) of the Act if a taxpayer fails to make all reasonable efforts necessary to join in or intervene, in a judicial proceeding for determination of the person entitled to, and the amount of, the investment credit allowable with respect to any film or tape covered by the election after receiving notice from the Commissioner or his delegate which indicates that a conflicting claim to the investment credit for such film or tape is being asserted in court by another person.

(d) *Furnishing of supplementary information required.* If these regulations are revised to require the furnishing of information in addition to that which was furnished with the amended returns and statement of election filed pursuant to paragraph (b) (2) and (3) of this section, the taxpayer must furnish such additional information in a statement addressed to the district director with whom the amended return and statement of election were filed.

((68A Stat. 917; 26 U.S.C. 7804); sec. 804(c)(2) (C) and (D) of the Tax Reform Act of 1976 (90 Stat. 1595))

[T.D. 7474, 42 FR 17123, Mar. 31, 1977; T.D. 7480, 42 FR 19479, Apr. 14, 1977]

§7.48-3 Election to apply the amendments made by sections 804 (a) and (b) of the Tax Reform Act of 1976 to property described in section 50(a) of the Code.

(a) *General rule.* Under section 804(e)(2) of the Tax Reform Act of 1976 (90 Stat. 1596), taxpayers may elect to apply the amendments made by section 804 (a) and (b) of the Act to movie and television films that are property described in section 50(a) of the Code and that were placed in service in taxable years beginning before January 1, 1975.

(b) *Time for and manner of making election—(1) Time for making election.* The election under section 804(e)(2) the Act must be made not later than October 4, 1977.

(2) *Manner of making election.* The election under section 804(e)(2) shall be made by applying the same rules applicable under section 804(c)(2) as described in §7.48-2(b) (2), (3), and (4) except that §7.48-2(b)(2)(ii) shall be read to require a statement that the taxpayer is making an election under section 804(e)(2) of the Act, and §7.48-2(b)(2)(vi) shall not apply. An election properly made under section 804(e)(2) of the Act may not be revoked after October 4, 1977.

(Sec. 804(e)(2), Tax Reform Act of 1976 (90 Stat. 1596))

[T.D. 7509, 42 FR 47828, Sept. 22, 1977]

§7.57(d)-1 Election with respect to straight line recovery of intangibles.

(a) *Purpose.* This section prescribes rules for making the election permitted under section 57(d)(2), as added by the Tax Reform Act of 1976. Under this election taxpayers may use cost depletion to compute straight line recovery of intangibles.

(b) *Election.* The election under section 57(d) is subject to the following rules:

(1) The election is made within the time prescribed by law (including extensions thereof) for filing the return for the taxable year in which the intangible drilling costs are paid or incurred or, if later, by July 25, 1978.

(2) The election is made separately for each well. Thus, a taxpayer may make the election for only some of his or her wells.