

costs before October 23, 2004, the taxpayer is entitled to make an election under this section with respect to those costs. If, before June 15, 2006, the taxpayer filed its Federal tax return for the taxable year in which production costs were first paid or incurred, and if the taxpayer wants to make a section 181 election for that taxable year, the taxpayer may make the election either by—

(i) Filing an amended Federal tax return for the taxable year in which production costs were first paid or incurred, and for all subsequent affected taxable year(s), on or before November 15, 2006, provided that all of these years are open under the period of limitations for assessment under section 6501(a); or

(ii) Filing a Form 3115, “Application For Change in Accounting Method,” for the first or second taxable year ending on or after December 31, 2005, in accordance with the administrative procedures issued under § 1.446-1(e)(3)(ii) for obtaining the Commissioner’s automatic consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 2002-9, 2002-1 CB 327, and § 601.601(d)(2)(ii)(b) of this chapter). This change in method of accounting results in a section 481 adjustment. Further, any limitations on obtaining the automatic consent of the Commissioner do not apply to a taxpayer seeking to change its method of accounting under this paragraph (e)(1). Moreover, the taxpayer must include on line 1a of the Form 3115 the designated automatic accounting method change number “100”.

(2) *Returns filed after June 14, 2006, and before March 12, 2007.* If, after June 14, 2006, and before March 12, 2007, the owner of a film or television production filed its original Federal income tax return for a taxable year ending after October 22, 2004, without making an election under section 181 for production costs first paid or incurred after October 22, 2004, and if the taxpayer wants to make an election under section 181 for production costs first paid or incurred during that taxable year, the taxpayer must make the election within the time provided by paragraph (a) of this section and in the manner provided in paragraph (c)(1) of

this section, except that the election statement attached to the return must include the information required in paragraphs (c)(1)(i) through (vi) of this section.

(3) *Information required.* If, in accordance with paragraph (e)(1) of this section, the taxpayer is making an election for a prior taxable year by filing amended Federal tax return(s), the statement and information required by paragraphs (c)(1) and (c)(2) of this section must be attached to each amended return. If, in accordance with paragraph (e)(1) of this section, the taxpayer is making a section 181 election for a prior taxable year by filing a Form 3115 for the first or second taxable year ending on or after December 31, 2005, the statement and information required by paragraphs (c)(1) and (c)(2) of this section must be attached to the Form 3115. For purposes of the preceding sentence, the amount of the cost or compensation paid or incurred for the production must only include the amount paid or incurred in taxable years prior to the year of change (for further guidance on year of change, see section 5.02 of Rev. Proc. 2002-9 and § 601.601(d)(2)(ii)(b) of this chapter).

[T.D. 9312, 72 FR 6159, Feb. 9, 2007]

§ 1.181-3T Qualified film or television production (temporary).

(a) *In general.* The term *qualified film or television production* means any production (as defined in paragraph (b) of this section) if not less than 75 percent of the total amount of compensation (as defined in paragraph (c) of this section) paid with respect to the production is qualified compensation (as defined in paragraph (d) of this section).

(b) *Production—(1) In general.* Except as provided in paragraph (b)(3) of this section, for purposes of this section and §§ 1.181-1T, 1.181-2T, 1.181-4T, 1.181-5T, and 1.181-6T, a film or television production (or production) means any film or video (including digital video) production the production cost of which is subject to capitalization under section 263A, or that would be subject to capitalization if section 263A applied to the owner of the production.

(2) *Special rules for television productions.* Each episode of a television series is a separate production to which

the rules, limitations, and election requirements of this section and §§1.181-1T, 1.181-2T, 1.181-4T, 1.181-5T, and 1.181-6T apply. A taxpayer may elect to deduct production costs under section 181 only for the first 44 episodes of a television series (including pilot episodes). A television series may include more than one season of programming.

(3) *Exception for certain sexually explicit productions.* A production does not include property with respect to which records are required to be maintained under 18 U.S.C. 2257. Section 2257 of Title 18 requires maintenance of certain records with respect to any book, magazine, periodical, film, videotape, or other matter that—

(i) Contains one or more visual depictions made after November 1, 1990, of active sexually explicit conduct; and

(ii) is produced in whole or in part with materials that have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce.

(c) *Compensation.* The term *compensation* means, for purposes of this section and §1.181-2T(c), all payments made by the owner (whether paid directly by the owner or paid indirectly on the owner's behalf) for services performed by actors (as defined in paragraph (f)(1) of this section), directors, producers, and other relevant production personnel (as defined in paragraph (f)(2) of this section) with respect to the production. Indirect payments on the owner's behalf include, for example, payments by a partner on behalf of an owner that is a partnership, payments by a shareholder on behalf of an owner that is a corporation, and payments by a contract producer on behalf of an owner. Payments for services include all elements of compensation as provided for in §1.263A-1(e)(2)(i)(B) and (3)(ii)(D). Compensation is not limited to wages reported on Form W-2, "Wage and Tax Statement," and includes compensation paid to independent contractors. However, solely for purposes of paragraph (a) of this section, the term "compensation" does not include participations and residuals (as defined in section 167(g)(7)(B)). See §1.181-

1T(a)(3) for additional rules concerning participations and residuals.

(d) *Qualified compensation.* The term *qualified compensation* means, for purposes of this section and §1.181-2T(c), all payments made by the owner (whether paid directly by the owner or paid indirectly on the owner's behalf) paid for services performed in the United States (as defined in paragraph (f)(3) of this section) by actors, directors, producers, and other relevant production personnel with respect to the production. A service is performed in the United States for purposes of this paragraph (d) if the principal photography to which the compensated service relates occurs within the United States and the person performing the service is physically present in the United States. For purposes of an animated film or animated television production, the location where production activities such as keyframe animation, in-between animation, animation photography, and the recording of voice acting performances are performed is considered in lieu of the location of principal photography. For purposes of a production incorporating both live action and animation, the location where production activities such as keyframe animation, in-between animation, animation photography, and the recording of voice acting performances for the production is considered in addition to the location of principal photography.

(e) *Special rule for acquired productions.* A taxpayer who acquires an unfinished production from a prior owner must take into account all compensation paid by or on behalf of the seller and any previous owners in determining if the production is a qualified film or television production as defined in paragraph (a) of this section. Any owner seeking to deduct as a production cost either the cost of acquiring a production or any subsequent production costs should obtain from the seller detailed records concerning the compensation paid with respect to the production in order to demonstrate the eligibility of the production under section 181.

(f) *Other definitions.* The following definitions apply for purposes of this

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section and §§ 1.181-1T, 1.181-2T, 1.181-4T, 1.181-5T, and 1.181-6T:

(1) *Actors.* The term *actors* includes players, newscasters, or any other persons who are compensated for their performance or appearance in a production.

(2) *Production personnel.* The term *production personnel* includes, for example, writers, choreographers, and composers providing services during production, casting agents, camera operators, set designers, lighting technicians, make-up artists, and others who are compensated for providing services directly related to producing the production.

(3) *United States.* The term *United States* includes the 50 states, the District of Columbia, the territorial waters of the continental United States, the airspace or space over the continental United States and its territorial waters, and the seabed and subsoil of those submarine areas that are adjacent to the territorial waters of the continental United States and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources. The term *United States* does not include possessions and territories of the United States (or the airspace or space over these areas).

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§ 1.181-4T Special rules (temporary).

(a) *Recapture—(1) Applicability.* The rules of this paragraph (a) apply notwithstanding whether a taxpayer has satisfied the requirements of § 1.181-2T(d). A taxpayer that, with respect to a production, claimed a deduction under section 181 in any taxable year in an amount in excess of the amount that would be allowable as a deduction for that year in the absence of section 181 must recapture deductions as provided for in paragraph (a)(3) of this section for the production in the first taxable year in which—

(i) The aggregate production cost of the production exceeds the applicable production cost limit under § 1.181-1T(b);

(ii) The owner no longer reasonably expects (based on all of the facts and circumstances at the time the election

was filed) both that the production will be set for production (or has been set for production) and will be a qualified film or television production, and that the aggregate production cost of the production paid or incurred will not, at any time, exceed the applicable dollar amount set forth under § 1.181-1T(b); or

(iii) the taxpayer revokes the election pursuant to § 1.181-2T(d).

(2) *Principal photography not commencing prior to January 1, 2009.* If a taxpayer claims a deduction under section 181 with respect to a production for which principal photography does not commence prior to January 1, 2009, the taxpayer must recapture deductions as provided for in paragraph (a)(3) of this section in the taxpayer's taxable year that includes December 31, 2008.

(3) *Amount of recapture.* A taxpayer subject to recapture under this § 1.181-4T must, in the taxable year in which recapture is triggered, include in the taxpayer's gross income and add to the taxpayer's adjusted basis in the property—

(i) For a production that is placed in service in a taxable year prior to the taxable year in which recapture is triggered, the difference between the aggregate amount claimed as a deduction under section 181 with respect to the production in all such prior taxable years and the aggregate depreciation deductions that would have been allowable with respect to the property for such prior taxable years (or that the taxpayer could have elected to deduct in the taxable year that the property was placed in service) with respect to the production under the taxpayer's method of accounting; or

(ii) For a production that has not been placed in service, the aggregate amount claimed as a deduction under section 181 with respect to the production in all such prior taxable years.

(b) *Recapture under section 1245.* For purposes of recapture under section 1245, any deduction allowed under section 181 is treated as a deduction allowable for amortization.

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§ 1.181-5T Examples (temporary).

The following examples illustrate the application of §§ 1.181-1T through 1.181-4T: