

## § 1.181-4T

## 26 CFR Ch. I (4-1-10 Edition)

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).

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

### § 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:

*Example 1.* X, a corporation using a calendar taxable year, is a producer of films. X is the owner (within the meaning of §1.181-1T(a)(2)) of film ABC. X incurs production costs in year 1, but does not commence principal photography for film ABC until year 2. In year 1, X reasonably expects, based on all of the facts and circumstances, that film ABC will be set for production and will be a qualified film or television production, and that at no time will the production cost of film ABC exceed the applicable production cost limit of §1.181-1T(b). Provided that X satisfies all other requirements of §§1.181-1T through 1.181-4T and §1.181-6T, X may deduct in year 1 the production costs for film ABC that X incurred in year 1.

*Example 2.* The facts are the same as in *Example 1*. In year 2, X begins, but does not complete, principal photography for film ABC. Most of the scenes that X films in year 2 are shot outside the United States and, as of December 31, year 2, less than 75 percent of the total compensation paid with respect to film ABC is qualified compensation. Nevertheless, X still reasonably expects, based on all of the facts and circumstances, that film ABC will be a qualified film or television production, and that at no time will the production cost of film ABC exceed the applicable production cost limit of §1.181-1T(b). Provided that X satisfies all other requirements of §§1.181-1T through 1.181-4T and §1.181-6T, X may deduct in year 2 the production costs for film ABC that X incurred in year 2.

*Example 3.* The facts are the same as in *Example 2*. In year 3, X continues, but does not complete, production of film ABC. Due to changes in the expected production cost of film ABC, X no longer expects film ABC to qualify under section 181. X files a statement with its return for year 3 identifying the film and stating that X revokes its election under section 181. X includes in income in year 3 the deductions claimed in year 1 and in year 2 as provided for in §1.181-4T. X has successfully revoked its election pursuant to §1.181-2T(d).

*Example 4.* The facts are the same as in *Example 2*. In year 3, X completes production of film ABC at a cost of \$14.5 million and places it into service. ABC is an unexpected success in year 4, causing participation payments to drive the total production cost of film ABC above \$15 million in year 4. X includes in income in year 4 as recapture under §1.181-4T(a) the difference between the deductions claimed in year 1, year 2, and year 3, and the deductions that it would have claimed under the income forecast method described in section 167(g) of the Internal Revenue Code, a method that was allowable for the film in year 3 (the year the film was placed in service). Because X calculated the recapture amount by comparing actual deductions to deductions under the income forecast meth-

od, X must use this method to calculate deductions for film ABC for year 4 and in subsequent taxable years.

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

#### § 1.181-6T Effective date (temporary).

(a) *In general.* (1) Section 181 applies to productions commencing after October 22, 2004, and shall not apply to productions commencing after December 31, 2008. Except as provided in paragraphs (b) and (c) of this section, §§1.181-1T through 1.181-5T apply to productions, the first day of principal photography for which occurs on or after February 9, 2007, and before January 1, 2009. In the case of an animated production, this paragraph (a) should be applied by substituting “in-between animation” in place of “principal photography”. Productions involving both animation and live-action photography may use either standard.

(2) The applicability of §§1.181-1T through 1.181-5T expires on February 8, 2010.

(b) *Application of regulation project REG-115403-05 to pre-effective date productions.* A taxpayer may apply §§1.181-1T through 1.181-5T to productions, the first day of principal photography (or “in-between” animation) for which occurs after October 22, 2004, and before February 9, 2007, provided that the taxpayer applies all provisions in §§1.181-1T through 1.181-5T to the productions.

(c) *Special rules for returns filed for prior taxable years.* If before March 12, 2007, an owner of a film or television production began principal photography (or “in-between” animation) for the production after October 22, 2004, and filed its original Federal income tax return for the year such costs were first paid or incurred without making an election under section 181 for the costs of the production, and if the taxpayer wants to make an election under section 181 for such taxable year, see §1.181-2T(e) for the time and manner of making the election.

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#### § 1.182-1 Expenditures by farmers for clearing land; in general.

Under section 182, a taxpayer engaged in the business of farming may elect, in the manner provided in §1.182-6, to deduct certain expenditures paid