

photography, keyframe animation, in-between animation, animation photography, and the recording of voice acting performances for the production consists of days during which such activities take place in such areas.

(v) *Establishing qualification.* An owner intending to utilize the higher aggregate production costs limit under this paragraph (b)(2) must establish qualification under this paragraph (b)(2).

(vi) [Reserved] For further guidance, see § 1.181-1T(b)(2)(vi).

(c) *Effect on depreciation or amortization of a qualified film or television production—(1) Pre-amendment production.* Except as provided in §§ 1.181-1(a)(3)(v) and 1.181-2(a)(2), an owner that elects to deduct production costs under section 181 for a pre-amendment production may not deduct production costs for that production under any provision of the Internal Revenue Code other than section 181 unless the recapture requirements of § 1.181-4(a) apply to the production.

(2) [Reserved] For further guidance, see § 1.181-1T(c)(2).

[T.D. 9551, 76 FR 60724, Sept. 30, 2011, as amended by T.D. 9552, 76 FR 64817, Oct. 19, 2011]

§ 1.181-1T Deduction for qualified film and television production costs (temporary).

(a)(1)(i) [Reserved] For further guidance, see § 1.181-1(a)(1)(i).

(ii) This section provides rules for determining the owner of a production, the production costs (as defined in paragraph (a)(3) of this section), the maximum amount of aggregate production costs (as defined in paragraph (a)(4) of this section) that may be paid or incurred for a pre-amendment production (as defined in paragraph (a)(5) of this section) for which the owner makes an election under section 181, and the maximum amount of aggregate production costs that may be claimed as a deduction for a post-amendment production (as defined in paragraph (a)(6) of this section) for which the owner makes an election under section 181. Section 1.181-2 provides rules for making the election under section 181. Section 1.181-3 provides definitions and rules concerning qualified film and tel-

evision productions. Section 1.181-4 provides special rules, including rules for recapture of the deduction. Section 1.181-5 provides examples of the application of §§ 1.181-1 through 1.181-4, while § 1.181-6 provides the effective date of §§ 1.181-1 through 1.181-5.

(2) through (5) [Reserved] For further guidance, see § 1.181-1(a)(2) through (a)(5).

(6) *Post-amendment production.* The term *post-amendment production* means a qualified film or television production commencing on or after January 1, 2008.

(7) [Reserved] For further guidance, see § 1.181-1(a)(7).

(b)(1)(i) [Reserved] For further guidance, see § 1.181-1 (b)(1)(i).

(ii) *Post-amendment production.* Section 181 permits a deduction for the first \$15,000,000 (or, if applicable under paragraph (b)(2) of this section, \$20,000,000) of the aggregate production costs of any post-amendment production.

(iii) [Reserved] For further guidance, see § 1.181-1(b)(1)(iii).

(2)(i) through (v) [Reserved] For further guidance, see § 1.181-1(b)(2)(i) through (b)(2)(v).

(vi) *Allocation.* Solely for purposes of determining whether a production qualifies for the higher production cost limit (for pre-amendment productions) or deduction limit (for post-amendment productions) provided under this paragraph (b)(2), compensation to actors (as defined in § 1.181-3(f)(1)), directors, producers, and other relevant production personnel (as defined in § 1.181-3 (f)(2)) is allocated entirely to first-unit principal photography.

(c)(1) [Reserved] For further guidance, see § 1.181-1(c)(1).

(2) *Post-amendment production.* Amounts not allowable as a deduction under section 181 for a post-amendment production may be deducted under any other applicable provision of the Code.

[T.D. 9552, 76 FR 64817, Oct. 19, 2011]

§ 1.181-2 Election to deduct production costs.

(a) *Election—(1) In general.* Except as provided in paragraph (a)(2) of this section, an owner may make an election under section 181 to deduct production costs of a production only if that owner

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has not deducted in a previous taxable year any production costs for that production under any provision of the Internal Revenue Code (Code) other than section 181.

(2) *Exception.* An owner may make an election under section 181 despite prior deductions under any other provision of the Code for amortization of the costs of acquiring or developing screenplays, scripts, story outlines, motion picture production rights to books and plays, and other similar properties for purposes of potential future development or production of a production, if such costs were paid or incurred before the first taxable year for which an election may be made under § 1.181-2(b) and are included in aggregate production costs.

(b) *Time of making election—(1) In general.* The election to deduct production costs for a production under section 181 must be made by the due date (including any extension) for filing the owner's Federal income tax return for the first taxable year in which:

(i) Any aggregate production costs have been paid or incurred;

(ii) The owner reasonably expects (based on all of the facts and circumstances) that the production will be set for production and will, upon completion, be a qualified film or television production; and

(iii) For any pre-amendment production, the owner reasonably expects (based on all of the facts and circumstances) that the aggregate production costs paid or incurred for the pre-amendment production will, at no time, exceed the applicable aggregate production costs limit set forth under § 1.181-1(b)(1)(i) or (b)(2).

(2) *Special rule.* If paragraph (b)(1) of this section is not satisfied until a taxable year subsequent to the taxable year in which any aggregate production costs were first paid or incurred, the owner must make the election for the taxable year in which paragraph (b)(1) of this section is first satisfied, and any production costs paid or incurred prior to the taxable year in which the owner makes the election and not deducted in a prior taxable year are treated as production costs (except costs described in § 1.181-2(a)(2)) that are deductible under § 1.181-

1(a)(1)(i) for the taxable year paragraph (b)(1) of this section is first satisfied and the election is made.

(3) *Six-month extension.* See § 301.9100-2 for a six-month extension of time to make the election in certain circumstances.

(c) *Manner of making election—(1) In general.* An owner must make the election under section 181 separately for each production. For a production owned by an entity, the election must be made by the entity. For example, if the production is owned by a partnership or S corporation, the partnership or S corporation must make the election.

(2) *Information required—(i) Initial election.* For each production to which the election applies, the owner must attach a statement to the owner's Federal income tax return for the taxable year of the election stating that the owner is making an election under section 181 and providing—

(A) The name (or other unique identifying designation) of the production;

(B) The date aggregate production costs were first paid or incurred for the production;

(C) The amount of aggregate production costs paid or incurred for the production during the taxable year (including costs described in §§ 1.181-1(a)(3)(v) and 1.181-2(b)(2));

(D) The amount of qualified compensation (as defined in § 1.181-3(d)) paid or incurred for the production during the taxable year (including costs described in § 1.181-2(b)(2));

(E) The amount of compensation (as defined in § 1.181-3(c)) paid or incurred for the production during the taxable year (including costs described in § 1.181-2(b)(2));

(F) If the owner expects that the aggregate production costs of the production will be significantly paid or incurred in (or, if applicable, if a significant portion of the total number of days of first-unit principal photography will occur in) one or more of the areas specified in § 1.181-1(b)(2)(i), the identity of the area or areas, the amount of aggregate production costs paid or incurred (or the number of days of first-unit principal photography engaged in) for the applicable activities described in § 1.181-1(b)(2)(ii), (b)(2)(iii),

or (b)(2)(iv), as applicable, that took place within such areas (including costs described in §§1.181-1(a)(3)(v) and 1.181-2(b)(2)), and the aggregate production costs paid or incurred (or the total number of days of first-unit principal photography engaged in) for such activities (whether or not they took place in such areas), for the taxable year (including costs described in §§1.181-1(a)(3)(v) and 1.181-2(b)(2));

(G) A declaration that the owner reasonably expects (based on all of the facts and circumstances at the time the election is made) 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

(H) For any pre-amendment production, a declaration that the owner reasonably expects (based on all of the facts and circumstances at the time the election is made) that the aggregate production costs paid or incurred for the pre-amendment production will not, at any time, exceed the applicable aggregate production costs limit set forth under §1.181-1(b)(1)(i) or (b)(2).

(ii) *Subsequent taxable years.* If the owner pays or incurs additional production costs in any taxable year subsequent to the taxable year for which production costs are first deducted under section 181, the owner must attach a statement to its Federal income tax return for that subsequent taxable year providing—

(A) The name (or other unique identifying designation) of the production that was used in the initial election, and any revised name (or unique identifying designation) subsequently used for the production;

(B) The date the aggregate production costs were first paid or incurred for the production;

(C) The amount of aggregate production costs paid or incurred for the production during the current taxable year;

(D) The amount of qualified compensation paid or incurred for the production during the current taxable year;

(E) The amount of compensation paid or incurred for the production during the current taxable year, and the aggregate amount of compensation paid

or incurred for the production in all prior taxable years;

(F) If the owner expects that the aggregate production costs of the production will be significantly paid or incurred in (or, if applicable, if a significant portion of the total number of days of first-unit principal photography will occur in) one or more of the areas specified in §1.181-1(b)(2)(i), the identity of the area or areas, the amount of aggregate production costs paid or incurred (or the number of days of first-unit principal photography engaged in) for the applicable activities described in §1.181-1(b)(2)(ii), (b)(2)(iii), or (b)(2)(iv), as applicable, that took place within such areas, and the aggregate production costs paid or incurred (or the number of days of first-unit principal photography engaged in) for such activities (whether or not they took place in such areas), for the current taxable year;

(G) A declaration that the owner continues to reasonably expect (based on all of the facts and circumstances at the end of the current taxable year) 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

(H) For any pre-amendment production, a declaration that the owner continues to reasonably expect (based on all of the facts and circumstances at the end of the current taxable year) that the aggregate production costs paid or incurred for the pre-amendment production will not, at any time, exceed the applicable aggregate production costs limit set forth under §1.181-1(b)(1)(i) or (b)(2).

(3) *Deductions by more than one person.* If more than one person will claim deductions under section 181 with respect to the production for the taxable year, each person claiming the deduction (but not the members of an entity who are issued a Schedule K-1 by the entity with respect to their interest in the production) must provide a list of the names and taxpayer identification numbers of all such persons, the dollar amount that each such person will deduct under section 181, and the information required by paragraph (c)(2) of this section for all such persons. Notwithstanding the preceding sentence,

whether or not multiple persons form a partnership with respect to the production will be determined in accordance with § 301.7701-3 of this chapter.

(d) *Revocation of election*—(1) *In general.* An owner may revoke an election made under this section only with the consent of the Commissioner. Except as provided in paragraph (d)(2) of this section, an owner seeking consent to revoke an election made under this section must submit a letter ruling request, other than a Form 3115, “Application for Change in Accounting Method,” under the appropriate revenue procedure. See, for example, Rev. Proc. 2011-1, 2011-1 CB 1 (updated annually) (see § 601.601(d)(2)(ii)(b) of this chapter).

(2) *Consent granted.* The Commissioner grants consent to an owner to revoke an election under this section for a particular production if the owner—

(i) Complies with the recapture provisions of § 1.181-4(a)(3) on a timely filed (including any extension) original Federal income tax return for the taxable year of the revocation; and

(ii) Attaches a statement to that Federal income tax return that includes the name of the production that was in the owner’s original election statement, and any revised name (or other unique identifying designation) of the production, and a statement that the owner revokes the election under section 181 for that production, pursuant to § 1.181-2(d)(2).

[T.D. 9551, 76 FR 60726, Sept. 30, 2011]

§ 1.181-3 Qualified film or television production.

(a) *In general.* The term *qualified film or television production* means any production (as defined in paragraph (b) of this section) for which not less than 75 percent of the aggregate amount of compensation (as defined in paragraph (c) of this section) paid or incurred for 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 §§ 1.181-1, 1.181-2, 1.181-4, 1.181-5, and 1.181-6, the term *production* means any motion picture film or video tape (including digital video) production the

production costs of which are subject to capitalization under section 263A, or that would be subject to capitalization if section 263A applied to the owner of the production. If, prior to its initial release or broadcast, a person acquires a completed motion picture film or video tape (including digital video) that the seller was entitled to treat as a production under this paragraph (b)(1), then the new owner may treat the acquired asset as a production within the meaning of this paragraph (b)(1).

(2) *Special rules for television productions.* Each episode of a television series is a separate production to which the rules, limits, and election requirements of this section and §§ 1.181-1, 1.181-2, 1.181-4, 1.181-5, and 1.181-6 apply. An owner 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 for which records are required to be maintained under 18 U.S.C. 2257.

(c) *Compensation.* The term *compensation* means, for purposes of this section and § 1.181-2(c)(2), all amounts paid or incurred either directly by the owner or indirectly on the owner’s behalf for services performed by actors (as defined in paragraph (f)(1) of this section), directors, producers, and other production personnel (as defined in paragraph (f)(2) of this section) for the production. Examples of indirect payments paid or incurred on the owner’s behalf are 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 the owner. Payments for services are all elements of compensation as provided for in §§ 1.263A-1(e)(2)(i)(B) and (e)(3)(ii)(D). Compensation is not limited to wages reported on Form W-2, “Wage and Tax Statement,” and includes compensation paid or incurred to independent contractors. However, solely for purposes of paragraph (a) of this section, the term