

### § 1.181-3

### 26 CFR Ch. I (4-1-13 Edition)

(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 "compensation" does not include participations and residuals (as defined in section 167(g)(7)(B)). See §1.181-1(a)(3) for additional rules concerning participations and residuals.

(d) *Qualified compensation.* The term *qualified compensation* means, for purposes of this section and §1.181-2(c)(2), all compensation (as defined in paragraph (c) of this section) paid or incurred for services performed in the United States (as defined in paragraph (f)(3) of this section) by actors, directors, producers, and other production personnel for 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 person who acquires a produc-

tion from a prior owner must take into account all compensation paid or incurred 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 that elects to deduct as production costs the costs of acquiring a production and any subsequent production costs must obtain from the seller detailed records concerning the compensation paid or incurred for the production and, for a pre-amendment production, concerning aggregate production costs, in order to demonstrate the eligibility of the production under section 181.

(f) *Other definitions.* The following definitions apply for purposes of this section and §§1.181-1, 1.181-2, 1.181-4, 1.181-5, and 1.181-6:

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

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

(3) *United States.* The term *United States* means 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, for 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. 9551, 76 FR 60727, Sept. 30, 2011]

#### § 1.181-4 Special rules.

(a) *Recapture—(1) Applicability—(i) In general.* The requirements of this paragraph (a) apply notwithstanding