

whether an owner has satisfied the revocation requirements of § 1.181-2(d). An owner that claimed a deduction under section 181 for a production 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 the excess amount as provided for in paragraph (a)(3) of this section for the production in the first taxable year for which—

(A) For any pre-amendment production, the aggregate production costs of the production exceed the applicable aggregate production costs limit under § 1.181-1(b)(1)(i) or (b)(2);

(B) For any pre-amendment production, the owner no longer reasonably expects (based on all of the facts and circumstances at the end of the current taxable year) that the aggregate production costs of the 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);

(C) The owner no longer reasonably expects (based on all of the facts and circumstances at the end of the current taxable year) either that the production will be set for production or that the production will be a qualified film or television production; or

(D) The owner revokes the election pursuant to § 1.181-2(d).

(ii) *Special rule.* An owner that claimed a deduction under section 181 and disposes of the production prior to its initial release or broadcast must recapture the entire amount specified under paragraph (a)(3) of this section in the year the owner disposes of the production before computing gain or loss from the disposition.

(2) *Principal photography not commencing prior to the date of expiration of section 181.* If an owner claims a deduction under section 181 for a production for which principal photography does not commence prior to the date of expiration of section 181, the owner must recapture deductions as provided for in paragraph (a)(3) of this section in the owner's taxable year that includes the date of expiration of section 181.

(3) *Amount of recapture.* An owner subject to the recapture requirements under this section must, for the taxable year in which recapture is re-

quired, include in the owner's gross income as ordinary income and add to the owner's adjusted basis in the property—

(i) For a production that is placed in service in a taxable year prior to the taxable year for which recapture is required, the difference between the aggregate amount the owner claimed as a deduction under section 181 for the production for all such prior taxable years and the aggregate depreciation deductions that would have been allowable for the production for such prior taxable years (or that the owner could have elected to deduct in the taxable year that the production was placed in service) for the production under the owner'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 for the production for 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.

[T.D. 9551, 76 FR 60728, Sept. 30, 2011]

#### § 1.181-5 Examples.

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

*Example 1.* X, a corporation that uses an accrual method of accounting and files Federal income tax returns on a calendar-year basis, is a producer of films. X is the owner (within the meaning of § 1.181-1(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. Provided that X satisfies all other requirements of §§ 1.181-1 through 1.181-4 and § 1.181-6, 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 for 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.

Provided that X satisfies all other requirements of §§1.181-1 through 1.181-4 and §1.181-6, 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 costs 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 §1.181-4(a)(3). X has successfully revoked its election pursuant to §1.181-2(d).

[T.D. 9551, 76 FR 60729, Sept. 30, 2011]

#### § 1.181-6 Effective/applicability date.

(a) *In general.* Except as otherwise provided in this section, §§1.181-1 through 1.181-5 apply to productions the first day of principal photography for which occurs on or after September 29, 2011. Paragraphs 1.181-1(a)(1)(ii), (a)(6), (b)(1)(ii), (b)(2)(vi), and (c)(2) of §1.181-1 apply to productions to which section 181 is applicable and for which the first day of principal photography or in-between animation occurs on or after December 7, 2012.

(b) *Pre-effective date productions.* For any taxable year for which the period of limitation on refund or credit under section 6511 has not expired, the owner may apply §§1.181-1 through 1.181-5 to any production to which section 181 applies and for which the first day of principal photography (or in-between animation) occurred before December 7, 2012, provided the owner applies all relevant provisions of §§1.181-1 through 1.181-5 to the production.

[T.D. 9603, 77 FR 72924, Dec. 7, 2012]

#### § 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 or incurred by him in any taxable year beginning after December 31, 1962, in the clearing of land. The expenditures to which the election applies are all expenditures paid or incurred during the taxable year in clearing land for the purpose of making the "land suitable for use in farming" (as defined in

§1.182-4) which are not otherwise deductible (exclusive of expenditures for or in connection with depreciable items referred to in paragraph (b)(1) of §1.182-3), but only if such expenditures are made in furtherance of the taxpayer's business of farming. The term *expenditures* to which the election applies also includes a reasonable allowance for depreciation (not otherwise allowable) on equipment used in the clearing of land provided such equipment, if used in the carrying on of a trade or business, would be subject to the allowance for depreciation under section 167. (See paragraph (c) of §1.182-3.) (See section 175 and the regulations thereunder for deductibility of certain expenditures for treatment or moving of earth by a farmer where the land already qualifies as land used in farming as defined in §1.175-4.) The amount deductible for any taxable year is limited to the lesser of \$5,000 or 25 percent of the taxable income derived from farming (as defined in paragraph (a)(2) of §1.182-5) during the taxable year. Expenditures paid or incurred in a taxable year in excess of the amount deductible under section 182 for such taxable year shall be treated as capital expenditures and shall constitute an adjustment to the basis of the land under section 1016(a).

[T.D. 6794, 30 FR 790, Jan. 26, 1965]

#### § 1.182-2 Definition of "the business of farming."

Under section 182, the election to deduct expenditures incurred in the clearing of land is applicable only to a taxpayer who is engaged in "the business of farming" during the taxable year. A taxpayer is engaged in the business of farming if he cultivates, operates, or manages a farm for gain or profit, either as owner or tenant. For purposes of section 182, a taxpayer who receives a rental (either in cash or in kind) which is based upon farm production is engaged in the business of farming. However, a taxpayer who receives a fixed rental (without reference to production) is engaged in the business of farming only if he participates to a material extent in the operation or management of the farm. A taxpayer engaged in forestry or the growing of timber is not thereby engaged in the