

§ 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.

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

§ 1.181-5T Examples (temporary).

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