

[4830-01-p]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

REG-115403-05

RIN 1545-BF94

Section 181 - Deduction for Qualified Film and Television Production Costs

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulation.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**,

the IRS is issuing temporary regulations under section 181 of the Internal Revenue

Code relating to deductions for costs of producing qualified film and television

productions. These temporary regulations reflect changes to the law made by the

American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005, and

affect taxpayers that produce films and television productions within the United States.

This action is necessary to provide guidance for the application of section 181. The text

of the temporary regulations also serves as the text of these proposed regulations. This

document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by May

10, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-115403-05), room 5203,

Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044.

Submissions may be hand delivered Monday through Friday between the hours of 8

a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-115403-05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, DC, or sent electronically, via the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs) or via the Federal eRulemaking Portal at <http://www.Regulations.gov/> (IRS REG-115403-05).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Bernard P. Harvey, (202) 622-3110; concerning submissions and to request a hearing, Kelly Banks, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

**Paperwork Reduction Act**

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by April 10, 2007. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in §1.181-2T(c). This information is required to verify that the production cost of the film or television production for which the deduction under section 181 of the Internal Revenue Code is claimed does not exceed the statutory production cost limit, that at least 75 percent of the compensation from the production is compensation for services performed in the United States, that production costs deducted under section 181(a)(2)(B) are substantially incurred in the specific areas designated in section 181(a)(2)(B), and that, in situations in which more than one taxpayer is claiming a deduction for a single production, the total deduction for the production does not exceed the statutory limit. The collection of information is mandatory. The likely recordkeepers are business or other for-profit institutions, and small businesses or organizations.

Estimated total annual recordkeeping burden: 1,500 hours.

The estimated annual burden per recordkeeper varies from 2 to 4 hours, depending on individual circumstances, with an estimated average of 3 hours.

Estimated number of recordkeepers: 500.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### **Background**

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to 26 CFR part 1 to provide regulations under section 181 of the Internal Revenue Code of 1986 (Code). Section 181 was added to the Code by section 244 of the American Jobs Creation Act of 2004, Public Law No. 108-357 (118 Stat. 1418) (Oct. 22, 2004), and was modified by section 403(e) of the Gulf Opportunity Zone Act of 2005, Public Law No. 109-135 (119 Stat. 2577) (Dec. 21, 2005).

### **Explanation of Provisions**

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) to add regulations under section 181 of the Internal Revenue Code of 1986 (Code). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these proposed regulations.

## **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The proposed regulations impose a collection of information on small entities in order to demonstrate eligibility for tax benefits under the statute, and this collection of information will require recordkeeping. This collection of information is discussed elsewhere in this preamble. However, the recordkeeping required by this collection of information does not differ significantly from the recordkeeping that a taxpayer must perform in order to determine whether the taxpayer is eligible to claim a deduction under the statute. Consequently, the economic impact on small entities resulting from the recordkeeping required under this regulation is de minimis. Accordingly, a regulatory flexibility analysis is not required. We request comment on the accuracy of this certification. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## **Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury Department generally request comments on the clarity of the

proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal author of these regulations is Bernard P. Harvey, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

#### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 continues read as follows:

Authority: 26 U.S.C. 7805 \*\*\*

Par. 2. Sections 1.181-0 through 1.181-6 are added as follows:

#### **§1.181-0 Table of contents.**

[The text of this proposed section is the same as the text of §1.181-0T published elsewhere in this issue of the **Federal Register**.]

#### **§1.181-1 Deduction for qualified film and television production costs.**

[The text of this proposed section is the same as the text of §1.181-1T published elsewhere in this issue of the **Federal Register**.]

§1.181-2 Election.

[The text of this proposed section is the same as the text of §1.181-2T published elsewhere in this issue of the **Federal Register**.]

§1.181-3 Qualified film or television production.

[The text of this proposed section is the same as the text of §1.181-3T published elsewhere in this issue of the **Federal Register**.]

§1.181-4 Special rules.

[The text of this proposed section is the same as the text of §1.181-4T published elsewhere in this issue of the **Federal Register**.]

§1.181-5 Examples.

[The text of this proposed section is the same as the text of §1.181-5T published elsewhere in this issue of the **Federal Register**.]

§1.181-6 Effective date.

[The text of this proposed section is the same as the text of §1.181-6T published elsewhere in this issue of the **Federal Register**.]

Deputy Commissioner for Services and Enforcement