Bulletin No. 2011-47 November 21, 2011



HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

T.D. 9551, page 774.

Final regulations under section 181 of the Code provide rules that relate to deductions for the costs of producing qualified film and television productions. The 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 persons that produce film and television productions within the United States.

T.D. 9552, page 783. REG-146297-09, page 795.

Final, temporary, and proposed regulations under section 181 of the Code relate to deductions for the costs of producing qualified film and television productions that are specific to productions commending after December 31, 2007.

Rev. Proc. 2011-55, page 793.

This procedure announces where certain state housing finance agencies and HUD should send to the IRS the information required by Notice 2011-14, 2011-11 I.R.B. 544. This procedure also advises those agencies and HUD of Form 1098-MA, *Mortgage Assistance Payments*, which they may, at their option, use to provide to homeowners and the IRS the information required by Notice 2011-14.

EMPLOYEE PLANS

Notice 2011-90, page 791.

2012 cost-of-living adjustments; retirements plans, etc.

This notice sets forth certain cost-of-living adjustments effective January 1, 2012, applicable to the dollar limitations on ben-

efits and contributions under qualified retirement plans. Other limitations applicable to deferred compensation plans are also affected by these adjustments under section 415. The limitations that are adjusted by reference to section 415(d) generally will change for 2012 because the increase in the cost-of-living index met the statutory thresholds that trigger their adjustment. This notice also contains cost-of-living adjustments for several pension-related amounts in restating the data in IR-2011-103 issued October 20, 2011.

EXEMPT ORGANIZATIONS

Announcement 2011-72, page 796.

The IRS has revoked its determination that National Heritage Foundation, Inc., of Falls Church, VA, qualifies as an organization described in sections 501(c)(3) and 170(c)(2) of the Code.

ADMINISTRATIVE

T.D. 9550, page 785.

Final regulations under section 6707A of the Code provide guidance with respect to the penalties applicable to the failure to include with any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction.

Notice 2011-91, page 792.

This notice provides that enrolled retirement plan agents are not required to obtain a preparer tax identification number (PTIN).

(Continued on the next page)

Actions Relating to Court Decisions is on the page following the Introduction. Announcements of Disbarments and Suspensions begin on page 796. Finding Lists begin on page ii.



Rev. Proc. 2011-55, page 793.

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The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Actions Relating to Decisions of the Tax Court

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The

Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both "acquiescence" and "acquiescence in result only" mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, "acquiescence" indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, "acquiescence in result only" indicates disagreement or concern with some or all of those reasons. "Nonacquiescence" signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In

reference to an opinion of a circuit court of appeals, a "nonacquiescence" indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Actions on Decisions published in the weekly Internal Revenue Bulletin are consolidated semiannually and appear in the first Bulletin for July and the Cumulative Bulletin for the first half of the year. A semiannual consolidation also appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner ACQUIESCES in the following decision:

O'Donnabhain v. Commissioner,¹ 134 T.C. 34 (2010) T.C. Docket No. 6402–06

The Commissioner does NOT ACQUI-ESCE in the following decision:

Appleton v. Commissioner,² No. 10–4522 (3rd Cir. June 10, 2011) (unpublished opinion) rev'g, 135 T.C. 461 (2010)

¹ Acquiescence relating to whether the taxpayer's expenses for gender reassignment surgery are deductible medical expenses under section 213 of the Code.

² Nonacquiescence to the Third Circuit's holding that the government of the United States Virgin Islands (USVI) should be permitted to intervene in the Tax Court deficiency proceeding pursuant to Fed. R. Civ. P. 24(b)(2).

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 181.—Treatment of Certain Qualified Film and Television Productions

26 CFR 1.181–1: Deduction for qualified film and television production costs.

T.D. 9551

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 602

Deduction for Qualified Film and Television Production Costs

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to deductions for the costs of producing qualified film and television productions. These final 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 persons that produce film and television productions within the United States.

DATES: *Effective Date:* These regulations are effective on September 29, 2011.

Applicability Dates: For dates of applicability, see §1.181–6.

FOR FURTHER INFORMATION CONTACT: Bernard P. Harvey, (202) 622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995

(44 U.S.C. 3507(d)) under control number 1545–2059. The collection of information in these final regulations is in §§1.181–1, 1.181–2, and 1.181–3. This information is required to enable the IRS to verify that a taxpayer is entitled to the deduction.

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.

Books and records relating to a collection of information must be retained as long as their contents might 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

This document contains amendments to 26 CFR part 1 to provide regulations under section 181 of the Internal Revenue Code of 1986 (Code). Section 181 permits the deduction of certain production costs by the producer of a qualified film or television production.

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) (October 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) (December 21, 2005).

On February 9, 2007, the IRS and the Treasury Department published in the Federal Register (T.D. 9312, 2007–1 C.B. 736 [72 FR 6155]) temporary regulations relating to deductions for the costs of producing film and television productions under section 181. On the same date, the IRS published a notice of proposed rulemaking related to this topic in the Federal Register (REG-115403-05, 2007-1 C.B. 767 [72 FR 6190]). No public hearing was requested or held. Several written comments were received. All comments are available at www.regulations.gov or upon request. After consideration of all the comments received, the proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed. The revisions to the proposed regulations are discussed in this preamble. Unless otherwise specifically stated, references to the temporary regulations are to T.D. 9312.

Section 502 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Public Law No. 110-343 (122 Stat. 3765) (October 3, 2008) further modified section 181 for film and television productions commencing after December 31, 2007, and extended section 181 to film and television productions commencing before January 1, 2010. Section 181 was extended again to film and television productions commencing before January 1, 2012, by section 744 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law No. 111-312 (December 17, 2010). The IRS and the Treasury Department intend to publish in the Federal Register proposed and temporary regulations pertaining to film and television productions commencing after December 31, 2007.

Explanation and Summary of Comments

General Overview

Congress enacted section 181 to promote film and television production in the United States. For a qualified film or television production commenced before January 1, 2008 (a "pre-amendment production"), section 181 permits an owner to elect to deduct production costs paid or incurred by that owner in the taxable year the costs are paid or incurred, in lieu of capitalizing the costs and recovering them through depreciation allowances, if the aggregate production costs do not exceed \$15 million (\$20 million if a significant amount of the aggregate production costs are paid or incurred in certain designated areas) for each qualifying production (the "aggregate production costs limit"). A film or television production (a "production") is a qualified film or television production if 75 percent of the total compensation for the production is compensation for services performed in the United States by actors, directors, producers, and other production personnel.

The final regulations use the term "pre-amendment production" to distinguish productions that are subject to the maximum aggregate production costs limit in section 181 as added by the American Jobs Creation Act of 2004 and modified by the Gulf Opportunity Zone Act of 2005 from productions that are subject to the maximum production costs deduction limit in the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. Several provisions of the final regulations are specific to pre-amendment productions and are designated accordingly.

Deduction for qualified film and television production costs

In response to a comment, the final regulations use the term "aggregate production costs" as the total production costs paid or incurred by any person without regard to whether that person deducted (or was an owner entitled to deduct) those costs under section 181. As suggested by the same comment, the final regulations clarify that costs paid on behalf of an owner (for example, participations and residuals paid by a distributor) are included in aggregate production costs, notwithstanding that such costs are not deductible production costs for the owner. Thus, the amount of an owner's deductible costs under section 181 may be less than the aggregate production costs. Further, costs are not deductible under section 181 for a pre-amendment production with aggregate production costs in excess of the aggregate production costs limit of \$15 million (or, if applicable, \$20 million), even if the owner's production costs are less than the aggregate production costs limit.

In response to a comment, the final regulations clarify that, for purposes of the aggregate production costs limit, participations and residuals are calculated based on amounts actually paid or incurred rather than upon the amount the owner would include in basis under section 167(g)(7)(A) based on the estimated income from the production. This clarification is consistent with the limitation that the owner may claim as a deduction only participations and residuals actually paid or incurred.

Several commentators suggested that requiring owners to include participations and residuals in aggregate production

costs in determining whether the aggregate production costs limit is exceeded creates uncertainty concerning whether the election is available for the production (and whether recapture may ultimately apply), and that this uncertainty will discourage persons interested in the benefits of section 181 from investing in potential qualified productions. This issue is addressed prospectively by section 502 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, which replaces the aggregate production costs limit with a deduction limit for productions commencing on or after January 1, 2008. However, absent a specific statutory directive to the contrary, all costs required to be capitalized to cost basis under section 263A, including participations and residuals, must be included in the aggregate production costs of pre-amendment productions for purposes of determining if the aggregate production costs limit is exceeded.

In response to a comment, the final regulations provide that, solely for purposes of determining if the higher aggregate production costs limit for productions in certain areas is available for a production, all compensation costs for actors, directors, producers, and other production personnel, are allocated entirely to first-unit principal photography rather than allocating a portion of these costs to rehearsal and other preproduction activities.

The deduction under section 181 is subject to the passive loss limitations imposed by section 469 and the at-risk rules imposed by section 465. An owner may claim the section 181 deduction against ordinary income under the rules of section 469 only if that owner materially participates in the production process; otherwise, the deduction is available only against passive income. Furthermore, an owner may only claim the section 181 deduction to the extent that the owner is at-risk within the meaning of section 465. Several commentators suggested that the final regulations exempt the deduction under section 181 from the passive loss and at-risk limitations, or that the final regulations otherwise determine that these limitations do not apply for section 181. Because there is no specific statutory direction specifying that these limitations do not apply, the section 181 deduction continues to be subject to the passive loss and at-risk limitations.

Election

To ensure that multiple persons do not claim aggregate deductions in excess of the deduction limit, the final regulations retain language from the temporary regulations recognizing that some productions are produced by multiple persons that have not entered into a partnership agreement and do not file as a partnership. However, the IRS is not bound by the reporting position of these persons; whether the activities of these persons rise to the level of a partnership will be determined in accordance with §301.7701–3 of this chapter.

Commentators asked whether there is a time limit between when a production is set for production and the time expected for commencement of principal photography and whether a minimum budget for production costs is required. Neither section 181 nor the final regulations impose such a time limit or minimum budget requirement.

Qualified film or television production (definitions)

Generally, a motion picture film or video tape (including digital video) for which the production costs are subject to capitalization under section 263A, or would be subject to capitalization if section 263A applied to the owner of the production, is a production for purposes of section 181. Thus, in response to a comment, the final regulations provide that a motion picture film or video tape (including digital video) acquired after "initial release or broadcast" is not a production. The final regulations define "initial release or broadcast" as the first commercial exhibition or broadcast to an audience. The object of this provision is to maximize the availability of the election under section 181 to advance the goal of the statute (to promote film and television production in the United States) while preventing the use of section 181 in cases that do not advance the goal of the statute, such as the purchase of an existing film library. Under the final regulation, the term "initial release or broadcast" does not include certain limited exhibitions primarily for purposes of publicity, marketing to potential purchasers or distributors, determining the need for further production activity, or raising funds for the completion of production. This exception is added to permit producers to exhibit productions at film festivals to interested buyers without compromising the ability of those buyers to use section 181, as well as to permit producers to test audience reaction to the production in order to determine if further production activities are needed. A person acquiring a completed motion picture film or video tape (including digital video) prior to its initial release or broadcast is considered an owner for purposes of section 181 and may treat the acquired asset as a production, even if the acquiring person does not pay or incur costs that are subject to section 263A.

A commentator asked whether video games or computer games are productions for purposes of section 181. They are not because they are not motion picture films or video tapes. However, to the extent that a game producer produces or acquires (prior to initial release or broadcast) a motion picture film or video tape (including digital video) 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) for inclusion in a game (for example, as a cinematic within the game), then the cost of producing that motion picture film or video tape may be eligible for section 181.

The IRS and the Treasury Department rejected a suggestion that, rather than allocating the cost of production services to the place where the principal photography occurs for purposes of determining whether the production is a qualified production, the final regulations should instead require that the majority of principal photography occur in the United States. The statute defines the term "qualified film or television production" with reference to "qualified compensation," defined as the amount of compensation for services paid to certain persons. The final regulations use the same definition, and require the owner to allocate compensation for services to those persons to the place where principal photography occurs in determining the amount of qualified compensation for the production. This approach is consistent with the statute and simplifies the calculation for the owner and prevents uncertainty that would otherwise arise from allocations to rehearsal and other preproduction activities.

Special Rules

The final regulations clarify that an owner must recapture the entire amount of any section 181 deduction when the owner sells a production prior to the initial release or broadcast in order to preserve the buyer's ability to deduct the acquisition cost of the production under section 181.

Effective/Applicability Date

These final regulations apply to qualified film and television productions for which principal photography or, for an animated production, in-between animation, commenced on or after September 29, 2011. The owner of a qualified film or television production for which principal photography or, for an animated production, in-between animation, commenced on or after October 22, 2004, and before February 9, 2007, or on or after January 1, 2009, and before September 29, 2011, may apply the proposed regulations published on February 9, 2007, or, in the alternative, may apply these final regulations.

Special Analyses

It has been determined that this Treasury decision 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 final 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. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

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

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows: Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.181–0 is added to read as follows:

§1.181–0 Table of contents.

This section lists the table of contents for §§1.181–1 through 1.181–6.

§1.181–1 Deduction for qualified film and television production costs.

- (a) Deduction.
- (1) In general.
- (2) Owner.
- (3) Production costs.
- (4) Aggregate production costs.
- (5) Pre-amendment production.
- (6) [Reserved].
- (7) Initial release or broadcast.
- (8) Special rule.
- (b) Limit on amount of aggregate production costs and amount of deduction.
 - (1) In general.
 - (i) Pre-amendment production.
 - (ii) [Reserved].
 - (iii) Special rules.
- (2) Higher limit for productions in certain areas.
 - (i) In general.
- (ii) Significantly paid or incurred for live action productions.

- (iii) Significantly paid or incurred for animated productions.
- (iv) Significantly paid or incurred for productions incorporating both live action and animation.
 - (v) Establishing qualification.
 - (vi) Allocation.
- (c) Effect on depreciation or amortization of a qualified film or television production.
 - (1) Pre-amendment production.
 - (2) [Reserved].

§1.181–2 Election to deduct production costs.

- (a) Election.
- (1) In general.
- (2) Exception.
- (b) Time of making election.
- (1) In general.
- (2) Special rule.
- (3) Six-month extension.
- (c) Manner of making election.
- (1) In general.
- (2) Information required.
- (i) Initial election.
- (ii) Subsequent taxable years.
- (3) Deductions by more than one person.
 - (d) Revocation of election.
 - (1) In general.
 - (2) Consent granted.

§1.181–3 Qualified film or television production.

- (a) In general.
- (b) Production.
- (1) In general.
- (2) Special rules for television productions.
- (3) Exception for certain sexually explicit productions.
 - (c) Compensation.
 - (d) Qualified compensation.
- (e) Special rule for acquired productions.
 - (f) Other definitions.
 - (1) Actors.
 - (2) Production personnel.
 - (3) United States.

§1.181–4 Special rules.

- (a) Recapture.
- (1) Applicability.
- (i) In general.
- (ii) Special rule.

- (2) Principal photography not commencing prior to the date of expiration of section 181.
 - (3) Amount of recapture.
 - (b) Recapture under section 1245.

§1.181–5 Examples.

§1.181–6 Effective/applicability date.

- (a) In general.
- (b) Application of proposed regulations to pre-effective date productions.
- (c) Application of §§1.181–1 through 1.181–5 to certain pre-effective date productions.

§1.181-0T [Removed]

Par. 3. Section 1.181–0T is removed. Par. 4. Section 1.181–1 is added to read as follows:

§1.181–1 Deduction for qualified film and television production costs.

- (a) Deduction—(1) In general. (i) An owner (as defined in paragraph (a)(2) of this section) of any film or television production (production, as defined in §1.181-3(b)) that the owner reasonably expects will be, upon completion, a qualified film or television production (as defined in §1.181-3(a)) may elect to treat production costs paid or incurred by that owner (subject to the limits imposed under paragraph (b) of this section) as an expense that is deductible for the taxable year in which the costs are paid (for an owner who uses the cash receipts and disbursements method of accounting) or incurred (for an owner who uses an accrual method of accounting). The deduction under section 181 is subject to recapture if the owner's expectations are later determined to be inaccurate.
- (ii) This section provides rules for determining the owner of a production, the production costs (as defined in paragraph (a)(3) of this section), and 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. 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 television 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) Owner. (i) For purposes of this section and §§1.181–2 through 1.181–6, an owner of a production is any person that is required under section 263A to capitalize the costs of producing the production into the cost basis of the production, or that would be required to do so if section 263A applied to that person.
- (ii) Further, a person that acquires a finished or partially-finished production is treated as an owner of that production for purposes of this section and §§1.181–2 through 1.181–6, but only if the production is acquired prior to its initial release or broadcast (as defined in paragraph (a)(7) of this section). Moreover, a person that acquires only a limited license or right to exploit a production, or receives an interest or profit participation in a production, as compensation for services, is not an owner of the production for purposes of this section and §§1.181–2 through 1.181–6.
- (3) Production costs. (i) For purposes of this section and §§1.181-2 through 1.181–6, the term *production costs* means all costs that are paid or incurred by an owner in producing a production that are required, absent the provisions of section 181, to be capitalized under section 263A, or that would be required to be capitalized if section 263A applied to the owner, and, if applicable, all costs that are paid or incurred by an owner in acquiring a production prior to its initial release or broadcast. Production costs include, but are not limited to, participations and residuals paid or incurred, compensation paid or incurred for services, compensation paid or incurred for property rights, non-compensation costs, and costs paid or incurred in connection with obtaining financing for the production (for example, premiums paid or incurred to obtain a completion bond for the production).
- (ii) Production costs do not include costs paid or incurred to distribute or exploit a production (including advertising and print costs).
- (iii) Production costs do not include the costs to prepare a new release or new

broadcast of an existing production after the initial release or broadcast of the production (for example, the preparation of a DVD release of a theatrically-released film, or the preparation of an edited version of a theatrically-released film for television broadcast). Costs paid or incurred to prepare a new release or a new broadcast of a production after its initial release or broadcast, therefore, are not taken into account for purposes of paragraph (b)(1) of this section, and may not be deducted under this paragraph (a).

- (iv) If a pre-amendment production is acquired from any person prior to its initial release or broadcast, the acquiring person must use as its initial aggregate costs the greater of
 - (A) The cost of acquisition; or
- (B) The seller's aggregate production costs.
- (v) Production costs do not include costs that the owner has deducted or begun to amortize prior to the taxable year the owner makes an election under §1.181–2 for the production (for example, costs described in §1.181–2(a)(2)). These costs, however, are included in aggregate production costs to the extent they would have been treated as production costs by the owner notwithstanding this paragraph (a)(3)(v).
- (4) Aggregate production costs. The term aggregate production costs means all production costs described in paragraph (a)(3) of this section paid or incurred by any person, whether paid or incurred directly by an owner or indirectly on behalf of an owner.
- (5) *Pre-amendment production*. The term *pre-amendment production* means a qualified film or television production commencing after October 22, 2004, and before January 1, 2008.
 - (6) [Reserved].
- (7) Initial release or broadcast. Solely for purposes of this section and §§1.181–2 through 1.181–6, the term initial release or broadcast means the first commercial exhibition or broadcast of a production to an audience. However, the term "initial release or broadcast" does not include limited exhibition prior to commercial exhibition to general audiences if the limited exhibition is primarily for purposes of publicity, marketing to potential purchasers or distributors, determining the need for further production activity, or raising funds

for the completion of production. For example, the term initial release or broadcast does not include exhibition to a test audience to determine the need for further production activity, or exhibition at a film festival for promotional purposes, if the exhibition precedes commercial exhibition to general audiences.

- (8) Special rule. The provisions of this paragraph (a) apply notwithstanding the treatment of participations and residuals permitted under the income forecast method in section 167(g)(7)(D).
- (b) Limit on amount of aggregate production costs and amount of deduction—(1) In general—(i) Pre-amendment production. Except as provided under paragraph (b)(2) of this section, no deduction is allowed under section 181 for any pre-amendment production, the aggregate production costs of which exceed 15,000,000. See also paragraph (a)(3)(iv) of this section. For a pre-amendment production for which the aggregate production costs do not exceed \$15,000,000 (or, if applicable under paragraph (b)(2) of this section, \$20,000,000), an owner may deduct under section 181 all of the production costs paid or incurred by that owner.
 - (ii) [Reserved].
- (iii) Special rules. The owner's deduction under section 181 is limited to the owner's acquisition costs of the production plus any further production costs paid or incurred by the owner. The deduction under section 181 is not available for any portion of the acquisition costs, and any subsequent production costs, of a production with an initial release or broadcast that is prior to the date of acquisition.
- (2) Higher limit for productions in certain areas—(i) In general. This section is applied by substituting \$20,000,000 for \$15,000,000 in paragraph (b)(1) of this section for any production the aggregate production costs of which are significantly paid or incurred in an area eligible for designation as—
- (A) A low income community under section 45D; or
- (B) A distressed county or isolated area of distress by the Delta Regional Authority established under 7 U.S.C section 2009aa–1.
- (ii) Significantly paid or incurred for live action productions. The aggregate production costs of a live action produc-

tion are significantly paid or incurred within one or more areas specified in paragraph (b)(2)(i) of this section if—

- (A) At least 20 percent of the aggregate production costs paid or incurred in connection with first-unit principal photography for the production are paid or incurred in connection with first-unit principal photography that takes place in such areas; or
- (B) At least 50 percent of the total number of days of first-unit principal photography for the production consists of days during which first-unit principal photography takes place in such areas.
- (iii) Significantly paid or incurred for animated productions. For purposes of an animated production, the aggregate production costs of the production are significantly paid or incurred within one or more areas specified in paragraph (b)(2)(i) of this section if—
- (A) At least 20 percent of the aggregate production costs paid or incurred in connection with keyframe animation, in-between animation, animation photography, and the recording of voice acting performances for the production are paid or incurred in connection with such activities that take place in such areas; or
- (B) At least 50 percent of the total number of days of 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.
- (iv) Significantly paid or incurred for productions incorporating both live action and animation. For purposes of a production incorporating both live action and animation, the aggregate production costs of the production are significantly paid or incurred within one or more areas specified in paragraph (b)(2)(i) of this section if—
- (A) At least 20 percent of the aggregate production costs paid or incurred in connection with first-unit principal photography, keyframe animation, in-between animation, animation photography, and the recording of voice acting performances for the production are paid or incurred in connection with such activities that take place in such areas; or
- (B) At least 50 percent of the total number of days of first-unit principal 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) Allocation. Solely for purposes of determining whether a production qualifies for the higher aggregate production costs limit provided under this paragraph (b)(2), compensation (as defined in §1.181–3(c)) to actors (as defined in §1.181–3(f)(1)), directors, producers, and other production personnel (as defined in §1.181–3(f)(2)) is allocated entirely to first-unit principal photography.
- (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].

§1.181–1T [Removed]

Par. 5. Section 1.181–1T is removed. Par. 6. Section 1.181–2 is added to read as follows:

§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 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 fu-

- ture 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 $\S1.181-1(a)(1)(i)$ 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 $\S1.181-1(b)(2)(i)$, 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 $\S1.181-1(b)(2)(i)$, 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 $\S1.181-1(b)(2)(ii)$, (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 pho-

- tography 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 C.B. 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).

§1.181–2T [Removed]

Par. 7. Section 1.181–2T is removed. Par. 8. Section 1.181–3 is added to read as follows:

§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 $\S1.263A-1(e)(2)(i)(B)$ 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 $\S1.181-2(c)(2)$, 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 production 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).

§1.181–3T [Removed]

Par. 9. Section 1.181–3T is removed. Par. 10. Section 1.181–4 is added to read as follows:

§1.181–4 Special rules.

- (a) Recapture—(1) Applicability—(i) In general. The requirements of this paragraph (a) apply notwithstanding 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 $\S1.181-2(d)$.
- (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 required, 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.

§1.181-4T [Removed]

Par. 11. Section 1.181–4T is removed. Par. 12. Section 1.181–5 is added to read as follows:

§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).

§1.181-5T [Removed]

Par. 13. Section 1.181–5T is removed. Par. 14. Section 1.181–6 is added to read as follows:

§1.181–6 Effective/applicability date.

(a) *In general*. Sections 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. For an animated production, this paragraph (a) applies

by substituting "in-between animation" in place of "principal photography". Productions involving both animation and live-action photography may use either standard.

- (b) Application of proposed regulations to pre-effective date productions. Except as provided in paragraph (c) of this section, an owner may apply 26 CFR 1.181.1T through 1.181–5T (as contained in 26 CFR part 1 revised April 1, 2008) to productions, the first day of principal photography (or in-between animation) for which occurs on or after October 22, 2004, and before February 9, 2007, or on or after January 1, 2009, and before September 29, 2011, provided that the owner applies all provisions of the proposed regulations to the productions.
- (c) Application of §§1.181–1 through 1.181–5 to certain pre-effective date productions. An owner may apply §§1.181–1 through 1.181–5 to productions, the first day of principal photography (or in-between animation) for which occurs on or after February 9, 2007, and before September 29, 2011, provided that the owner applies all provisions of §§1.181–1 through 1.181–5 to the productions.

§1.181–6T [Removed]

Par. 15. Section 1.181-6T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 16. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 17. In §602.101, paragraph (b) is amended as follows:

1. The following entries to the table are removed:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described		Current OMB Control No.
* * * * * * 1.181–1T and 1.181–2T		
2. The following entries are added in numerical order to table:	\$602.101 OMB Control numbers. * * * * *	(b) * * *

CFR part or section where identified and described	Current OMB Control No.
* * * * *	
1.181-1	 1545–2059
1.181–2	 1545–2059
1.181–3	 1545–2059
* * * * *	

Steven T. Miller, Deputy Commissioner for Services and Enforcement.

Approved September 19, 2011.

Emily S. McMahon, Acting Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on September 29, 2011, 8:45 a.m., and published in the issue of the Federal Register for September 30, 2011, 76 F.R. 60721)

T.D. 9552

Deduction for Qualified Film and Television Production Costs

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to deductions for the cost of producing film and television productions. These temporary regulations reflect changes to the law made by the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, and affect taxpayers that produce films and television productions within the United States. The text of these temporary regulations also

serves as the text of the proposed regulations (REG-146297-09) set forth in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on October 18, 2011.

Applicability Dates: For dates of applicability, see §1.181–6T.

FOR FURTHER INFORMATION CONTACT: Bernard P. Harvey, (202) 622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 to provide regulations under section 181 of the Internal Revenue Code of 1986 (Code). Section 181 permits the deduction of certain production costs by the producer of a qualified film or television production.

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) (October 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) (December 21, 2005). Section 502 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Public Law No. 110–343 (122 Stat. 3765) (October 3, 2008) further modified section 181 for film and tele-

vision productions commencing after December 31, 2007, and extended section 181 to film and television productions commencing before January 1, 2010. Section 181 was extended again to film and television productions commencing before January 1, 2012, by section 744 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law No. 111–312 (December 17, 2010).

On September 30, 2011, the IRS and the Treasury Department published in the **Federal Register** (T.D. 9551 [76 FR 60721]) final regulations relating to deductions for the cost of producing film and television productions under section 181 as enacted by the American Jobs Creation Act of 2004 and modified by the Gulf Opportunity Zone Act of 2005.

Explanation of Provisions

Section 181 permits an owner of a qualified film or television production to elect to deduct production costs paid or incurred by that owner for the year the costs are paid or incurred, in lieu of capitalizing the costs and recovering them through depreciation allowances. For a qualified film or television production that commenced before January 1, 2008 (a "pre-amendment production"), this deduction is available only if the aggregate production costs paid or incurred by all owners do not exceed \$15 million (\$20 million if a significant

amount of the production costs are paid or incurred in certain designated areas) for each qualified production (the "aggregate production costs limit"). For productions commencing on or after January 1, 2008, the aggregate production costs limit does not apply; instead, the aggregate deduction under section 181 for production costs paid or incurred by all owners of a qualified film or television production is limited to \$15 million (\$20 million if a significant amount of the production costs are incurred in certain designated areas) for each qualified production (the "deduction limit"). A film or television production ("production") is a qualified film or television production if at least 75 percent of the total compensation of the production is compensation for services performed in the United States by actors, directors, producers, and other production personnel.

These temporary regulations amend §1.181–1 to define the term "post-amendment production" and specify that the aggregate deduction under section 181 (rather than the amount of aggregate production costs) is subject to the dollar limits imposed under §1.181–1(b). The temporary regulations also amend §\$1.181–0 (table of contents) and 1.181–6 (effective date provisions).

Effective Date

These temporary regulations apply to qualified film and television productions for which principal photography or, for an animated production, in-between animation, commenced on or after October 18, 2011. An owner may choose to apply these temporary regulations to qualified film or television productions commencing on or after January 1, 2008, and before October 18, 2011.

Special Analyses

It has been determined that this Treasury decision 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. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analyses section of the preamble to the cross-reference notice of pro-

posed rulemaking published in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, these temporary regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

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

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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 to read in part as follows: Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.181-1 is amended by revising paragraphs (a)(1)(ii), (a)(6), (b)(1)(ii), (b)(2)(vi), and (c)(2) to read as follows:

§1.181–1 Deduction for qualified film and television production costs.

- (a) * * *
- (1) * * *
- (ii) [Reserved]. For further guidance, see $\S1.181-1T(a)(1)(ii)$.

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(6) [Reserved]. For further guidance, see $\S1.181-1T(a)$ (6).

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- (b) * * *
- (1)***
- (ii) [Reserved]. For further guidance, see $\S1.181-1T(b)(1)(ii)$.

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- (2) * * *
- (vi) [Reserved]. For further guidance, see $\S1.181-1T(b)(2)(vi)$.

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- (c) * * *
- (2) [Reserved]. For further guidance, see $\S1.181-1T(c)$ (2).

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Par. 3. Section 1.181–0T is added to read as follows:

§1.181–0T Table of contents (temporary).

This section lists the entries for §§1.181–1T and 1.181–6T.

- §1.181–1T Deduction for qualified film and television production costs (temporary).
- (a) through (a)(5) [Reserved]. For further guidance, see entries for §1.181–1(a) through (a)(5).
 - (6) Post-amendment production.
- (a)(7) through (b)(1)(i) [Reserved]. For further guidance, see entries for §1.181–1(a)(7) through (b)(1)(i).
 - (ii) Post-amendment costs.
- (b)(1)(iii) through (c)(1) [Reserved]. For further guidance, see entries for $\S1.181-1(b)(1)(iii)$ through (c)(1).
 - (2) Post-amendment production.
- §1.181–6T Effective/applicability dates (temporary).
 - (a) In general.
- (b) Application of temporary regulations to pre-effective date productions.

Par. 4. Section 1.181–1T is added to read as follows:

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

- (a)(1)(i) [Reserved]. For further guidance, see $\S1.181-1(a)(1)(i)$.
- (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 television

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 $\S1.181-1(a)(7)$.
- (b)(1)(i) [Reserved]. For further guidance, see $\S 1.181-1$ (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 $\S1.181-1(b)(2)(i)$ 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 $\S1.181-1(c)(1)$.
- (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.

Par. 4. Section 1.181–6T is added to read as follows:

§1.181–6T Effective/applicability dates (temporary).

(a) *In general*. (1) Except as provided in paragraph (b) of this section, §1.181–1T applies to productions, the first day of principal photography for which occurs on or after October 18, 2011, and before the

date of expiration of section 181 as provided in section 181(f). For an animated production, this paragraph (a) applies by substituting "in-between animation" in place of "principal photography." Productions involving both animation and live-action photography may use either standard.

- (2) The applicability of §1.181–1T expires on October 17, 2014.
- (b) Application of temporary regulations to pre-effective date productions. An owner may apply §1.181-1T to productions, the first day of principal photography (or "in-between" animation) for which occurs after December 31, 2007, and before October 18, 2011, provided that the taxpayer applies all provisions in §1.181-1T and in §§1.181-1 through 1.181–5 (other than provisions specific to pre-amendment productions) to the productions. If a taxpayer does not choose to apply §1.181-1T to a production, the first day of principal photography (or "in-between" animation) for which occurs after December 31, 2007, and before October 18, 2011, then the taxpayer must use a reasonable method to take into account the statutory change to section 181 under section 502 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. See §1.181-6.

Steven T. Miller, Deputy Commissioner for Services and Enforcement.

Approved September 19, 2011.

Emily S. McMahon, Acting Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on October 18, 2011, 8:45 a.m., and published in the issue of the Federal Register for October 19, 2011, 76 F.R. 64816)

Section 6707A.—Penalty for Failure to Include Reportable Transaction Information With Return

26 CFR 301.6707A-1: Failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction.

T.D. 9550

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301

Section 6707A and the Failure to Include on any Return or Statement any Information Required to be Disclosed Under Section 6011 with Respect to a Reportable Transaction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance regarding section 6707A of the Internal Revenue Code (Code) with respect to the penalties applicable to the failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction. These final regulations reflect amendments under the Small Business Jobs Act of 2010 that revise the penalty calculation.

DATES: *Effective Date:* These regulations are effective on September 7, 2011.

Applicability Date: For dates of applicability, see §301.6707A–1(f).

FOR FURTHER INFORMATION CONTACT: Spence Hanemann, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 301 under section 6707A of the Code. On September 11, 2008, temporary regulations (T.D. 9425, 2008–2 C.B. 1100) relating to the penalty under section 6707A for the failure to include on any

return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction were published in the Federal Register (73 FR 52784). A notice of proposed rulemaking (REG-160868-04, 2008-2 C.B. 1115) cross-referencing the temporary regulations was published in the Federal **Register** on the same day (73 FR 52805). No public hearing was requested or held. One written comment responding to the notice of proposed rulemaking was received from the public. This comment was considered and is available for public inspection at www.regulations.gov or upon request. Upon due consideration, the proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed. The revisions are discussed in this preamble.

Summary of Comments and Explanation of Revisions

1. 2010 Amendments to Section 6707A

On September 27, 2010, the President signed into law the Small Business Jobs Act of 2010, Public Law 111-240 (124 Stat. 2504), section 2041 of which amended section 6707A of the Code. The amendments revise the amount of the penalty to make the penalty proportionate to the decrease in tax shown on the return as a result of the reportable transaction (or which would have resulted from the reportable transaction if it were respected for Federal tax purposes). The amendments also establish maximum and minimum penalty amounts. The amended penalty calculation was made retroactive to penalties assessed after December 31, 2006. To account for the change in the law, these final regulations conform to the statutory language of section 6707A, as amended. These changes are reflected in §§301.6707A-1(a) and 301.6707A–1(e). These final regulations follow the amended statutory language regarding the amount of the penalty enacted in the Small Business Jobs Act of 2010, but do not give further guidance on how the amount of the penalty is computed. The Treasury Department and the IRS are aware that questions have been raised regarding the 2010 amendments to section 6707A and expect to issue regulations that will provide guidance on the computation of the amount of the penalty, as amended, at a later time. Interested persons may submit comments regarding the 2010 amendments to section 6707A relating to the computation of the penalty, including how to determine the decrease in tax shown on the return and application of the maximum penalty. For information on how to submit comments, see the section on "Comments on Future Notice of Proposed Rulemaking" in this preamble.

The proposed regulations included factors the Commissioner would consider and weigh in determining whether to grant a request for rescission of the section 6707A penalty associated with a nonlisted reportable transaction. Under the law in effect at the time the proposed regulations were issued, the section 6707A penalty amount was a fixed dollar amount that did not account for the tax benefit associated with the reportable transaction. The proposed regulations included consideration of whether the penalty assessed was disproportionately larger than the tax benefit received among the factors in the Commissioner's determination. Because the 2010 amendments to section 6707A provide that the penalty is a percentage of the tax benefit associated with the reportable transaction subject to maximum and minimum limitations on the penalty amounts, consideration of whether the penalty assessed is disproportionately larger than the tax benefit received for purposes of rescission was eliminated.

Also, at the time the proposed regulations were issued, the section 6707A(e) penalty for failing to disclose the requirement to pay certain penalties in certain Securities and Exchange Commission (SEC) filings was treated in the same way as the penalty for failure to disclose a listed transaction as required under section 6011. Because a penalty for failing to disclose a listed transaction is not subject to rescission, the proposed regulations stated that the section 6707A(e) penalty for failing to make a disclosure in an SEC filing also was not subject to rescission. As a result of the 2010 amendments to section 6707A, the penalty for failure to make a disclosure in an SEC filing is no longer treated exclusively like a section 6707A penalty for failure to disclose a listed transaction as required by section 6011. These final regulations adopt the rule that the section 6707A(e) penalty for failing to disclose certain penalties in SEC filings will be rescinded if the IRS rescinds in full the section 6707A penalty for failing to disclose under section 6011 the reportable transaction that underlies the section 6707A(e) penalty.

2. Clarifying Changes

The final regulations clarify where a late Form 8886 should be filed in order for the late submission to weigh in favor of rescinding the penalty for not filing the form as required by §1.6011-4. These final regulations generally state that, if a taxpayer inadvertently fails to file a Form 8886 as required by §1.6011-4 and, upon becoming aware of the failure, files an untimely but otherwise complete and proper Form 8886, the filing of the untimely disclosure statement will weigh in favor of rescission. Under §1.6011-4, a taxpayer who has participated in a reportable transaction must file a disclosure statement, Form 8886, "Reportable Transaction Disclosure Statement," providing detailed information about the transaction and its expected tax treatment and all potential tax benefits. The taxpayer must attach a Form 8886 to any tax return (including any amended return or application for tentative refund) that reflects participation in a reportable transaction. At the same time that the Form 8886 is first filed by the taxpayer pertaining to a particular reportable transaction, the taxpayer also must send a copy of the Form 8886 to the Office of Tax Shelter Analysis (OTSA). These final regulations generally provide that, in order to weigh in favor of rescission, an untimely disclosure statement should be filed with the office or offices where the disclosure statement should have been filed in the first instance. If the taxpayer failed to file a disclosure statement with a return (including an amended return or application for tentative refund), the taxpayer must file an amended return with the disclosure statement so that the service center can associate the untimely disclosure statement with the proper return. The amended return accompanying the untimely disclosure statement must make no amendments to the original return other than the inclusion of the untimely disclosure statement. Additionally, the taxpayer must state in the space provided for an explanation of changes on the amended return that it is filing the amended return solely because it failed to disclose a reportable transaction on its original return. An example was added to the final regulation to illustrate these rules.

A clarifying change was also made with respect to §1.6707A-1(d)(5) relating to rescission. Reasonable cause and good faith is a factor that may weigh in favor of rescission. Part of a determination whether reasonable cause and good faith exist may depend upon whether a taxpayer reasonably believed that the Code did not require disclosure or disclosure was adequately made. To acknowledge that these are appropriate considerations, a statement was added to the regulation that the Commissioner may consider doubt as to liability to the extent it is a factor in the determination of reasonable cause and good faith. Otherwise, the Commissioner (or the Commissioner's delegate) will not consider doubt as to liability for the penalties in determining whether to grant rescission.

In addition to the changes described in this preamble, these final regulations clarify the language of the proposed regulations in a few other ways not intended to be substantive.

3. Clarification of Section 6011 References

A commenter suggested that references to section 6011 be revised to reference either §1.6011-4 or the other Code provisions that deal specifically with reportable transactions. In response to this comment pinpoint citations to the regulations under section 6011 were added in some examples. The language used in section 6707A refers to the general provision of section 6011 rather than to a specific regulatory section under section 6011. These regulations include language that mirrors the language used in section 6707A, but also include appropriate citations to regulations under section 6011 to add clarity to the scope of these regulations.

4. Comments on Future Notice of Proposed Rulemaking

As discussed in this preamble, interested persons may submit comments on the future Notice of Proposed Rulemaking regarding the 2010 amendments to section

6707A relating to the computation of the penalty under section 6707A. Comments should be submitted in writing and can be mailed to Office of Associate Chief Counsel (Procedure and Administration), Re: REG–103033–11, CC:PA:B02, Room 5135, 1111 Constitution Avenue, NW, Washington, DC 20224.

Special Analyses

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Spence Hanemann of the Office of the Associate Chief Counsel (Procedure and Administration) and Adrienne Mikolashek, formerly of the Office of the Associate Chief Counsel (Procedure and Administration).

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Par. 2. Section 301.6707A-1 is added to read as follows:

§301.6707A–1 Failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction.

- (a) In general. Any person who fails to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction may be subject to a monetary penalty. Subject to maximum and minimum limits, the penalty for failure to include information with respect to any reportable transaction is 75 percent of the decrease in tax shown on the return as a result of the transaction or the decrease that would have resulted from the transaction if it were respected for Federal tax purposes. The penalty for failure to include information with respect to a listed transaction shall not exceed \$100,000 for a natural person and \$200,000 for all other persons. The penalty for failure to include information with respect to any other reportable transaction shall not exceed \$10,000 for a natural person and \$50,000 for all other persons. The penalty with respect to any reportable transaction shall not be less than \$5,000 for a natural person and \$10,000 for all other persons. The section 6707A penalty is in addition to any other penalty that may be imposed.
- (b) Definitions—(1) Reportable transaction. The term "reportable transaction" is defined in section 6707A(c)(1) of the Code and §1.6011–4(b)(1) of this chapter.
- (2) Listed transaction. The term "listed transaction" is defined in section 6707A(c)(2) of the Code and §1.6011-4(b)(2) of this chapter.
- (c) Assessment of the penalty—(1) In general. The Internal Revenue Service may assess a penalty under section 6707A with respect to each failure to disclose a reportable transaction within the time and in the form and manner provided by §§1.6011–4(d) and 1.6011–4(e) of this chapter or pursuant to the time, form, and manner stated in other published guidance. Section 1.6011-4(e) provides, in part, that a taxpayer must attach a disclosure statement to the taxpayer's return for each taxable year for which the taxpayer participates in a reportable transaction. A taxpayer also must attach a disclosure statement to each amended return that reflects the taxpayer's participation in a

reportable transaction and, if a reportable transaction results in a loss that is carried back to a prior year, a taxpayer must attach a disclosure statement to the taxpayer's application for tentative refund or amended return for that prior year. In addition, a copy of the disclosure statement must be sent to the IRS Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction. Nonetheless, a taxpayer who is required to disclose a transaction by filing Form 8886, "Reportable Transaction Disclosure Statement," (or successor form) with a return (including an amended return or application for tentative refund) and who is also required to disclose the transaction by filing that form with OTSA, is subject to only a single section 6707A penalty for failure to make either one or both of those disclosures. If section 6011 and the regulations thereunder require a disclosure statement to be filed at the time that a return is filed, the disclosure statement is considered to be timely filed if it is filed at the same time as the return, even if the return is filed untimely after its due date (including extensions).

(2) *Examples*. The rules of paragraph (c)(1) of this section are illustrated by the following examples:

Example 1. Taxpayer T is required to attach a Form 8886 to its return for the 2008 taxable year and to send a copy of the Form 8886 to OTSA at the time it files its return. Taxpayer T fails to attach the Form 8886 to its return and fails to send a copy of the Form 8886 to OTSA. Taxpayer T is subject to a single penalty under section 6707A for failure to disclose because Taxpayer T failed to comply with the disclosure requirements of section 6011 as described in §§1.6011–4(d) and 1.6011–4(e) of this chapter. A penalty under section 6707A also would apply if Taxpayer T had failed to comply with only one of the two requirements.

Example 2. Same as Example 1, except that Taxpayer T also subsequently files an amended return for 2008 that reflects Taxpayer T's participation in the reportable transaction described in Example 1. Taxpayer T fails to attach a Form 8886 to the amended return as required by \$1.6011–4(e)(1) of this chapter. Taxpayer T is subject to an additional penalty under section 6707A for failing to disclose a reportable transaction on the amended return for 2008.

Example 3. In November 2009, Taxpayer U participates in a reportable transaction resulting in a loss. On March 15, 2010, Taxpayer U files its 2009 return, on which it reports the loss and to which it fails to attach a Form 8886. One month later, Taxpayer U files an amended return for 2008, on which it carries back the loss and to which it fails to attach a Form 8886. Section 1.6011–4(e)(1) of this chapter requires Tax-

payer U to attach a Form 8886 to its amended return for the 2008 taxable year. Taxpayer U is subject to two penalties under section 6707A: one for the failure to attach Form 8886 to its amended return for 2008 and another for the failure to attach Form 8886 to its 2009 return.

Example 4. Taxpayer V participates in a nonlisted reportable transaction and is required to attach a Form 8886 to its return for the 2009 taxable year that is due on March 15, 2010. Taxpayer V timely files its return but fails to attach the Form 8886 to its return. After the due date of Taxpayer V's return and without an extension of time to file, Taxpayer V files an amended return relating to the 2009 taxable year to which Taxpayer V attaches the Form 8886. Taxpayer V is subject to a penalty under section 6707A for failure to disclose because Taxpayer V failed to comply with the disclosure requirements of section 6011 (described in §1.6011-4(e)(1) of this chapter) by not attaching a Form 8886 to its original return for the 2009 taxable year that was timely filed on or before the due date of March 15, 2010. An additional penalty under section 6707A would apply if Taxpayer V had failed to attach a Form 8886 to its amended return.

Example 5. Shareholder W, a shareholder in an S Corporation, receives a timely Schedule K-1, "Shareholder's Share of Income, Deductions, Credits, etc.," on April 10, 2009, and determines that she is required to attach a Form 8886 to her individual income tax return for the 2008 taxable year. Shareholder W fails to attach the Form 8886 to her 2008 individual income tax return but files a proper and complete Form 8886 with OTSA on June 12, 2009. Section 1.6011-4(e)(1) of this chapter provides that if a taxpayer who is a partner in a partnership, a shareholder in an S corporation, or a beneficiary of a trust receives a timely Schedule K-1 less than 10 calendar days before the due date of the taxpayer's return (including extensions) and, based on receipt of the timely Schedule K-1, the taxpayer determines that the taxpayer participated in a reportable transaction, the disclosure statement will not be considered late if the taxpayer discloses the reportable transaction by filing a disclosure statement with OTSA within 60 calendar days after the due date of the taxpayer's return (including extensions). Accordingly, Shareholder W is not subject to a penalty under section 6707A for failure to disclose.

Example 6. In July 2008, Taxpayer X participates in Transaction Z, a transaction that is not reportable as of April 15, 2009, the date Taxpayer X files his individual income tax return for 2008. On July 15, 2009, Transaction Z is identified as a transaction of interest. Section 1.6011-4(e)(2)(i) of this chapter provides that if a transaction that is not otherwise a reportable transaction becomes a listed transaction or a transaction of interest after the taxpayer has filed a tax return (including an amended return) reflecting the taxpayer's participation in the listed transaction or transaction of interest and before the end of the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the listed transaction or transaction of interest, then a disclosure statement must be filed with OTSA within 90 calendar days after the date on which the transaction became a listed transaction or transaction of interest. regardless of whether the taxpayer participated in the transaction in the year the transaction became a listed transaction or a transaction of interest. Taxpayer X fails to file a Form 8886 with OTSA by October 13, 2009, 90 calendar days after the date that the transaction was identified as a transaction of interest. Accordingly, Taxpayer X is subject to a penalty under section 6707A.

Example 7. Taxpayer Y is required to attach a Form 8886 to its return for the 2008 taxable year with respect to participation in a listed transaction. Taxpayer Y attaches the Form 8886 to its timely filed return. The Form 8886, however, does not describe all of the potential tax benefits expected to result from this transaction and states that information will be provided upon request. Because the Form 8886 does not describe all of the potential tax benefits expected to result from the transaction and merely provides that the information will be provided upon request, the Form 8886 filed by Taxpayer Y is incomplete and does not satisfy the requirements set forth in §1.6011-4(d) of this chapter. Taxpayer Y is subject to a penalty under section 6707A for failure to disclose in the appropriate manner.

- (d) Rescission authority—(1) In general. The Commissioner (or the Commissioner's delegate) may rescind the section 6707A penalty if—
- (i) The violation relates to a reportable transaction that is not a listed transaction; and
- (ii) Rescinding the penalty would promote compliance with the requirements of the Code and effective tax administration.
- (2) Requesting rescission. The Secretary may prescribe the procedures for a taxpayer to request rescission of a section 6707A penalty with respect to a reportable transaction other than a listed transaction by publishing a revenue procedure or other guidance in the Internal Revenue Bulletin.
- (3) Factors that weigh in favor of granting rescission. In determining whether rescission would promote compliance with the requirements of the Internal Revenue Code and effective tax administration, the Commissioner (or the Commissioner's delegate) will take into account the following list of factors that weigh in favor of granting rescission. This is not an exclusive list and no single factor will be determinative of whether to grant rescission in any particular case. Rather, the Commissioner (or the Commissioner's delegate) will consider and weigh all relevant factors, regardless of whether the factor is included in this list.
- (i) The taxpayer, upon becoming aware that it failed, in whole or in part, to disclose a reportable transaction in accordance with the requirements of \$1.6011–4 of this chapter, filed a complete and proper, albeit untimely, Form 8886 (or successor form), as required by \$1.6011–4. If the

penalty is due to the taxpayer's failure to file Form 8886 (or successor form) with a return (including an amended return or application for tentative refund), in order for an untimely disclosure to weigh in favor of rescission, the taxpayer must file an amended return with the appropriate Service Center and attach a complete and proper Form 8886 (or successor form) to that amended return. The amended return filed with the untimely Form 8886 (or successor form) must not reflect any other changes to the return (including an amended return or application for tentative refund) that it amends, and the taxpayer must, in the space provided for an explanation of changes on the amended return, state the reason for filing the amended return. If the penalty is due to the taxpayer's failure to file Form 8886 (or successor form) with OTSA, in order for an untimely disclosure to weigh in favor of rescission, the taxpayer must file a complete and proper Form 8886 (or successor form) with OTSA. If the taxpayer fails to file a complete and proper Form 8886 (or successor form) with the return (including an amended return or application for tentative refund) and also fails to file a copy of the complete and proper Form 8886 (or successor form) with OTSA, incurring one penalty for both failures, then the taxpayer must, in the manner prescribed in this paragraph (d)(3)(i), file complete and proper Forms 8886 with both the Service Center and OTSA in order for the untimely disclosures to weigh in favor of rescission. This factor will weigh heavily in favor of rescission provided that—

- (A) The taxpayer files the Form 8886 prior to the date the IRS first contacts the taxpayer (including contacts by the IRS with any partnership in which the taxpayer is a partner, any S corporation in which the taxpayer is a shareholder, or any trust in which the taxpayer is a beneficiary) concerning a tax examination for the tax period in which the taxpayer participated in the reportable transaction; and
- (B) Other circumstances suggest that the taxpayer did not delay filing an untimely but properly completed Form 8886 until after the IRS had taken steps to identify the taxpayer's participation in the reportable transaction in question.
- (ii) The failure, in whole or in part, to disclose in accordance with the requirements of §1.6011–4 of this chapter was due

- to an unintentional mistake of fact that existed despite the taxpayer's reasonable attempts to ascertain the correct facts with respect to the transaction.
- (iii) The taxpayer has an established history of properly disclosing other reportable transactions and complying with other tax laws.
- (iv) The taxpayer demonstrates that the failure to include on any return or statement any information required to be disclosed under section 6011 arose from events beyond the taxpayer's control.
- (v) The taxpayer cooperates with the IRS by providing timely information with respect to the transaction at issue that the Commissioner (or the Commissioner's delegate) may request in consideration of the rescission request. In considering whether a taxpayer cooperates with the IRS, the Commissioner (or the Commissioner's delegate) will take into account whether the taxpayer meets the deadlines described in Rev. Proc. 2007–21, 2007–1 C.B. 613 (or successor document) (see §601.601(d)(2)(ii)(b) of this chapter) for complying with requests for additional information.
- (vi) Assessment of the penalty weighs against equity and good conscience, including whether the taxpayer demonstrates that there was reasonable cause for, and the taxpayer acted in good faith with respect to, the failure to timely file or to include on any return any information required to be disclosed under section 6011. An important factor in determining reasonable cause and good faith is the extent of the taxpayer's efforts to ensure that persons who prepared the taxpayer's return were informed of the taxpayer's participation in the reportable transactions; this factor will be disregarded, however, if the persons who prepared the taxpayer's return were material advisors with respect to the reportable transaction. The presence of reasonable cause, however, will not necessarily be determinative of whether to grant
- (4) Absence of favorable factors weighs against rescission. The absence of facts establishing the factors described in paragraph (d)(3) of this section weighs against granting rescission. The absence of any one of these factors, however, will not necessarily be determinative of whether to grant rescission.

- (5) Factors not considered. In determining whether to grant rescission, the Commissioner (or the Commissioner's delegate) will not consider collectability of, or doubt as to liability for, the penalties (except that the Commissioner may consider doubt as to liability to the extent it is a factor in the determination of reasonable cause and good faith).
- (6) *Example*. The following example illustrates the rules of paragraph (d)(3) of this section:

Example. In 2008, Taxpayer Z participated in a nonlisted reportable transaction for the first time. Under §1.6011-4(e)(1) of this chapter, he was required to attach a complete and proper Form 8886 to his 2008 return, due on April 15, 2009, and to file a copy of the Form 8886 with OTSA. Taxpayer Z timely filed his 2008 return but failed to attach a Form 8886 to his return or file a Form 8886 with OTSA. On June 1, 2009, Taxpayer Z discovered his error. On June 8, 2009, Taxpayer Z filed an amended return for tax year 2008 and attached a complete and proper Form 8886 that disclosed his participation in the reportable transaction. The amended return reflected no changes from the original return and explained that the sole purpose of the amended return was to correct Taxpayer Z's failure to file a Form 8886 with his original return. On June 8, 2009, Taxpayer Z also filed a copy of the complete and proper Form 8886 with OTSA. The IRS later notified Taxpayer Z that he was subject to a penalty under section 6707A because he failed to comply with the disclosure requirements of section 6011 by not attaching Form 8886 to his return for the 2008 taxable year. The IRS properly assessed the penalty under section 6707A and, on October 15, 2010, issued notice and demand. On November 1, 2010, in accordance with Rev. Proc. 2007-21, Taxpayer Z submitted a written request for rescission of the assessed penalty. The fact that Taxpayer Z filed an untimely Form 8886 shortly after discovery of his error but before the IRS first contacted him concerning his return for the 2008 taxable year will weigh heavily in favor of rescission.

- (e) Reports to the Securities and Exchange Commission (SEC)—(1) In general. Under section 6707A(e), a taxpayer who is required to file periodic reports under section 13 or section 15(d) of the Securities Exchange Act of 1934 (or is required to be consolidated with another person for purposes of these reports) must disclose in certain reports, as provided in revenue procedures or other guidance published pursuant to paragraph (e)(2) of this section, the requirement to pay each of the following penalties:
- (i) The penalty imposed by section 6707A(a) for failure to disclose a listed transaction.
- (ii) The accuracy-related penalty imposed by section 6662A(a) at the 30-percent rate determined under section

6662A(c) for a reportable transaction understatement with respect to which the relevant facts affecting the tax treatment of the reportable transaction were not adequately disclosed in accordance with regulations prescribed under section 6011.

- (iii) The accuracy-related penalty imposed by section 6662(a) at the 40-percent rate determined under section 6662(h) for a gross valuation misstatement, if the tax-payer (but for the exclusionary rule of section 6662A(e)(2)(C)(ii)) would have been subject to the accuracy-related penalty under section 6662A(a) at the 30-percent rate determined under section 6662A(c).
- (iv) The penalty described in paragraph (e)(3) of this section for failure to disclose in periodic reports filed with the SEC the requirement to pay any of the penalties described in paragraphs (e)(1)(i) through (e)(1)(iii) or paragraph (e)(3) of this section.
- (2) Manner and content of disclosure. The Secretary may, by publishing a revenue procedure or other guidance in the Internal Revenue Bulletin, prescribe the manner in which the disclosure under paragraph (e)(1) of this section must be made, including identification of the specific SEC form and section thereof in which the taxpayer must make the disclosure as well as specification of the timing and contents of the disclosure.
- (3) Penalty for failure to disclose in SEC filings. Any taxpayer who is required to file periodic reports under section 13 or section 15(d) of the Securities Exchange

Act of 1934 (or is required to file consolidated reports with another person) may be subject to a penalty under section 6707A(b) for each failure to disclose the requirement to pay a penalty identified in paragraphs (e)(1)(i) through (e)(1)(iii) of this section in the manner specified by revenue procedure or other guidance published in the Internal Revenue Bulletin. The taxpayer also may be subject to an additional penalty under section 6707A(b) for each failure to disclose a penalty arising under this section in the manner specified by revenue procedure or other guidance published in the Internal Revenue Bulletin. The penalty provided by this paragraph (e)(3) will be rescinded if the IRS rescinds in full the penalty for failing to disclose under section 6011 the reportable transaction underlying the penalty provided by this section. Otherwise, the penalty provided by this paragraph (e)(3) is not subject to rescission.

- (f) Effective/applicability date. (1) The rules of this section apply to disclosure statements that are due after September 11, 2008
- (2) The penalty calculations set forth in paragraph (a) of this section apply to penalties assessed after December 31, 2006.

§301.6707A-1T [Removed].

Par. 3. Section 301.6707A–1T is removed.

Steven T. Miller, Deputy Commissioner for Services and Enforcement.

Approved August 19, 2011.

Emily S. McMahon, Acting Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on September 1, 2011, 4:15 p.m., and published in the issue of the Federal Register for September 7, 2011, 76 F.R. 55256)

Section 6721.—Failure to File Correct Information Returns

The Service announces where certain state housing finance agencies and HUD should send to the IRS the information required by Notice 2011–14, 2011–11 I.R.B. 544. The Service also advises those agencies and HUD of Form 1098-MA, *Mortgage Assistance Payments*, which they may, at their option, use to provide to homeowners and the IRS the information required by Notice 2011–14.

Section 6722.—Failure to Furnish Correct Payee Statements

The Service announces where certain state housing finance agencies and HUD should send to the IRS the information required by Notice 2011–14, 2011–11 I.R.B. 544. The Service also advises those agencies and HUD of Form 1098-MA, *Mortgage Assistance Payments*, which they may, at their option, use to provide to homeowners and the IRS the information required by Notice 2011–14.

Part III. Administrative, Procedural, and Miscellaneous

2012 Limitations Adjusted As Provided in Section 415(d), etc.¹

Notice 2011-90

Section 415 of the Internal Revenue Code (the Code) provides for dollar limitations on benefits and contributions under qualified retirement plans. Section 415(d) requires that the Commissioner annually adjust these limits for cost-of-living increases. Other limitations applicable to deferred compensation plans are also affected by these adjustments under § 415. Under § 415(d), the adjustments are to be made pursuant to adjustment procedures which are similar to those used to adjust benefit amounts under § 215(i)(2)(A) of the Social Security Act.

The limitations that are adjusted by reference to § 415(d) generally will change for 2012 because the increase in the cost-of-living index met the statutory thresholds that trigger their adjustment. For example, the limitation under § 402(g)(1) on the exclusion for elective deferrals described in § 402(g)(3) will increase from \$16,500 to \$17,000 for 2012. This limitation affects elective deferrals to § 401(k) plans, § 403(b) plans, and the Federal Government's Thrift Savings Plan, among other plans.

Cost-of-Living Adjusted Limits for 2012

Effective January 1, 2012, the limitation on the annual benefit under a defined benefit plan under § 415(b)(1)(A) is increased from \$195,000 to \$200,000. Pursuant to § 1.415(d)-1(a)(2)(ii) of the Income Tax Regulations, the adjustment to the limitation under a defined benefit plan under § 415(b)(1)(B) is determined using a special rule. This special rule takes into account the following recent history of changes in the cost-of-living indexes: (1) the cost-of-living index for the quarter ended September 30, 2009, was less than the cost-of-living index for the quarter ended September 30, 2008; (2) the cost-of-living index for the quarter ended September 30, 2010, was greater than the cost-of-living index for the quarter ended September 30, 2009, but less than the cost-of-living index for the quarter ended September 30, 2008; and (3) the cost-of-living index for the quarter ended September 30, 2011, was greater than the cost-of-living index for all prior periods.

For a participant who separated from service before Jan. 1, 2010, the participant's limitation under a defined benefit plan under § 415(b)(1)(B) for 2012 is computed by multiplying the participant's 2011 compensation limitation by 1.0327 in order to reflect changes in the cost-of-living index from the quarter ended September 30, 2008, to the quarter ended September 30, 2011. For a participant who separated from service during 2010 or 2011, the limitation under a defined benefit plan under § 415(b)(1)(B) for 2012 is computed by multiplying the participant's 2011 compensation limitation by 1.0376 in order to reflect changes in the cost-of-living index from the quarter ended September 30, 2010, to the quarter ended September 30, 2011.

The limitation for defined contribution plans under \$ 415(c)(1)(A) is increased in 2012 from \$49,000 to \$50,000.

The Code provides that various other dollar amounts are to be adjusted at the same time and in the same manner as the dollar limitation of § 415(b)(1)(A). After taking into account the applicable rounding rules, the amounts for 2012 are as follows:

The limitation under \$ 402(g)(1) on the exclusion for elective deferrals described in \$ 402(g)(3) is increased from \$ 16,500 to \$ 17,000.

The annual compensation limit under \$\$ 401(a)(17), 404(1), 408(k)(3)(C), and 408(k)(6)(D)(ii) is increased from \$245,000 to \$250,000.

The dollar limitation under § 416(i)(1)(A)(i) concerning the definition of key employee in a top-heavy plan is increased from \$160,000 to \$165,000.

The dollar amount under § 409(o)(1)(C)(ii) for determining the maximum account balance in an employee stock ownership plan subject to a 5-year distribution period is increased

from \$985,000 to \$1,015,000, while the dollar amount used to determine the lengthening of the 5-year distribution period is increased from \$195,000 to \$200,000.

The limitation used in the definition of highly compensated employee under § 414(q)(1)(B) is increased from \$110,000 to \$115,000.

The dollar limitation under § 414(v)(2)(B)(i) for catch-up contributions to an applicable employer plan other than a plan described in § 401(k)(11) or 408(p) for individuals aged 50 or over remains unchanged at \$5,500. The dollar limitation under § 414(v)(2)(B)(ii) for catch-up contributions to an applicable employer plan described in § 401(k)(11) or 408(p) for individuals aged 50 or over remains unchanged at \$2,500.

The annual compensation limitation under § 401(a)(17) for eligible participants in certain governmental plans that, under the plan as in effect on July 1, 1993, allowed cost-of-living adjustments to the compensation limitation under the plan under § 401(a)(17) to be taken into account, is increased from \$360,000 to \$375,000.

The compensation amount under § 408(k)(2)(C) regarding simplified employee pensions (SEPs) remains unchanged at \$550.

The limitation under § 408(p)(2)(E) regarding SIMPLE retirement accounts remains unchanged at \$11,500.

The limitation on deferrals under § 457(e)(15) concerning deferred compensation plans of state and local governments and tax-exempt organizations is increased from \$16,500 to \$17,000.

The compensation amounts under $\S 1.61-21(f)(5)(i)$ of the Income Tax Regulations concerning the definition of "control employee" for fringe benefit valuation purposes is increased from \$95,000 to \$100,000. The compensation amount under $\S 1.61-21(f)(5)(iii)$ is increased from \$195,000 to \$205,000.

The Code also provides that several pension-related amounts are to be adjusted using the cost-of-living adjustment under § 1(f)(3). After taking the applicable rounding rules into account, the amounts for 2012 are as follows:

The adjusted gross income limitation under § 25B(b)(1)(A) for determining the retirement savings contribution credit for taxpayers filing a joint return is increased from \$34,000 to \$34,500; the limitation under § 25B(b)(1)(B) is increased from \$36,500 to \$37, 500; and the limitation under § 25B(b)(1)(C) and (D) is increased from \$56,500 to \$57,500.

The adjusted gross income limitation under § 25B(b)(1)(A) for determining the retirement savings contribution credit for taxpayers filing as head of household is increased from \$25,500 to \$25,875; the limitation under § 25B(b)(1)(B) is increased from \$27,375 to \$28,125; and the limitation under § 25B(b)(1)(C) and (D) is increased from \$42,375 to \$43,125.

The adjusted gross income limitation under § 25B(b)(1)(A) for determining the retirement savings contribution credit for all other taxpayers is increased from \$17,000 to \$17,250; the limitation under § 25B(b)(1)(B) is increased from \$18,250 to \$18,750; and the limitation under § 25B(b)(1)(C) and (D) is increased from \$28,250 to \$28,750.

The deductible amount under § 219(b)(5)(A) for an individual making qualified retirement contributions remains unchanged at \$5,000.

The applicable dollar amount under § 219(g)(3)(B)(i) for determining the deductible amount of an IRA contribution for taxpayers who are active participants filing a joint return or as a qualifying widow(er) is increased from \$90,000 to \$92,000. The applicable dollar amount under § 219(g)(3)(B)(ii) for all other taxpayers (other than married taxpayers filing separate returns) is increased from \$56,000 to \$58,000. The applicable dollar amount under § 219(g)(7)(A) for a taxpayer who is not an active participant but whose spouse is an active participant is increased from \$169,000 to \$173,000.

The adjusted gross income limitation under § 408A(c)(3)(C)(ii)(I) for determining the maximum Roth IRA

contribution for taxpayers filing a joint return or as a qualifying widow(er) is increased from \$169,000 to \$173,000. The adjusted gross income limitation under § 408A(c)(3)(C)(ii)(II) for all other taxpayers (other than married taxpayers filing separate returns) is increased from \$107,000 to \$110,000.

The dollar amount under Section 430(c)(7)(D)(i)(II) used to determine excess employee compensation with respect to a single-employer defined benefit pension plan for which the special election under section 430(c)(2)(D) has been made is increased from \$1,014,000 to \$1,039,000.

Drafting Information

The principal author of this notice is John Heil of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding the data in this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1–877–829–5500 (a toll-free call) between the hours of 8:30 a.m. and 4:30 p.m. Eastern time Monday through Friday. For information regarding the methodology used in arriving at the data in this notice, please e-mail Mr. Heil at RetirementPlanQuestions@irs.gov.

Certain Enrolled Retirement Plan Agents Not Required to Obtain a PTIN

Notice 2011-91

The regulations governing practice before the IRS, which are published in 31 CFR part 10 and are reprinted as Treasury Department Circular No. 230 (Circular 230), establish enrolled retirement plan agents as individuals who may practice before the IRS. Enrolled retirement plan agents' practice is limited under section 10.3(e) of Circular 230 to representing taxpayers before the IRS with respect to issues involving the following programs or forms: employee plans determination letter program, employee plans compliance resolution system, employee plans master and prototype and

volume submitter program, and the Form 5300 and the Form 5500 series that are filed by retirement plans and plan sponsors but not with respect to actuarial forms or schedules.

Section 10.4(b) of Circular 230 requires individuals who want to become an enrolled retirement plan agent to have a valid preparer tax identification number (PTIN), and section 10.6(d)(3) requires enrolled retirement plan agents to have a valid PTIN to be eligible to renew their status as an enrolled retirement plan agent.

Section 1.03 of Notice 2011–6, 2011–3 I.R.B. 315 provides that a tax return preparer must have a PTIN to prepare for compensation any IRS form unless the form is expressly identified as not requiring a PTIN. Notice 2011-6 further provides a list of forms for which no PTIN is required. Among the forms included on this list are the Form 5300 and the Form 5500 series returns. The IRS has been informed, through public comments, that many enrolled retirement plan agents prepare only the Form 5300 or the Form 5500 series returns. These public comments are available upon request or at www.regulations.gov.

The Treasury Department and the IRS therefore intend to amend Circular 230 to remove the requirement for individuals to have a PTIN prior to applying for enrollment or renewing enrollment as enrolled retirement plan agents. Thus, effective immediately, enrolled retirement plan agents and applicants to become enrolled retirement plan agents are not required to have a PTIN to apply for enrollment or renew enrollment as an enrolled retirement plan agent. Enrolled retirement plan agents must, however, obtain a PTIN if, for compensation, they prepare, or assist in the preparation of, all or substantially all of any tax return or claim for refund that is not on the list of forms exempt from the PTIN requirement as provided in section 1.03 of Notice 2011-6 or any future guidance.

The principal author of this notice is Emily M. Lesniak of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact Emily M. Lesniak at (202) 622–4570 (not a toll-free call).

26 CFR 1.6050H-1: Information reporting of mortgage interest received in a trade or business from an individual.

(Also: Part 1, §§ 6721, 6722.)

Rev. Proc. 2011-55

SECTION 1. PURPOSE

This revenue procedure specifies the Internal Revenue Service (IRS) office to which state housing finance agencies (State HFAs) and the Department of Housing and Urban Development (HUD) should send the statements described in Notice 2011–14, 2011–11 I.R.B. 544. This revenue procedure also advises State HFAs and HUD of Form 1098-MA, *Mortgage Assistance Payments*, which they may, at their option, use as a statement that satisfies the requirements of Notice 2011–14.

SECTION 2. BACKGROUND

.01 Notice 2011–14 provides guidance on the federal tax consequences of payments made to or on behalf of financially distressed homeowners under (1) programs designed by State HFAs with funds allocated from the Housing Finance Agency Innovation Fund for the Hardest-Hit Housing Markets (State Programs), and (2) HUD's Emergency Homeowners' Loan Program (EHLP) and any existing state program receiving funding from the EHLP (the substantially similar state programs, or SSSPs). Notice 2011–14 also provides guidance on the information reporting obligations for these payments.

.02 Section 6050H of the Internal Revenue Code requires every person engaged in a trade or business (including governments and their agencies) to (1) file an information return for each calendar year in which the person receives in the course of its trade or business payments from an individual of interest on a mortgage aggregating \$600 or more, and (2) furnish a copy of the information return to that individual. See § 6050H(a) and (d) and § 1.6050H–1(a) of the Income Tax Regulations.

.03 Section 6721 of the Code imposes penalties on a person for failing to include all required information or including incorrect information on an information return. Section 6722 imposes penalties on a person for failing to include all required information or including incorrect information on a payee statement.

.04 Notice 2011–14 provides that the IRS will not assert penalties under §§ 6721 and 6722 of the Code against any State HFA for failing to file and furnish correct Forms 1098, *Mortgage Interest Statement*, for calendar years 2011 and 2012 if the State HFA provides each homeowner and the IRS a statement setting forth (1) the homeowner's name and TIN, and (2) the amount of payments that the State HFA made to a mortgage servicer under the State Program or the SSSP during that year (separately stating the amount the State HFA paid and the amount the homeowner paid).

.05 Notice 2011–14 provides that, for calendar years 2011 and 2012, HUD should provide each homeowner and the IRS a statement setting forth (1) the homeowner's name and TIN, and (2) the amount of payments HUD made to the mortgage servicer under the EHLP during that year (separately stating the amount HUD paid and the amount the homeowner paid).

.06 Notice 2011–14 advises State HFAs and HUD to use a single statement to provide the required names, TINs, and payment amounts of each homeowner to the IRS.

.07 Notice 2011–14 provides that the IRS intends to issue future guidance specifying the IRS office where the State HFAs and HUD should send the single statements.

SECTION 3. SCOPE

This revenue procedure applies to State HFAs that make payments to mortgage servicers under a State Program or an SSSP, and applies to HUD for payments made to mortgage servicers under the EHLP, during calendar years 2011 and 2012.

SECTION 4. APPLICATION

.01 *Filing address*. State HFAs and HUD (collectively, Filers) should send the statement described in Notice 2011–14 to the IRS at the following address:

Department of the Treasury Internal Revenue Service Center Stop 6728AUSC Austin, TX 73301 .02 Filers using Form 1098-MA. Filers may, at their option, use Copy A of Form 1098-MA to provide to the IRS the information required by Notice 2011–14. Filers file Copy A of Form 1098-MA with the IRS at the address listed in section 4.01 of this revenue procedure. Copy A of Form 1098-MA may not be filed electronically. Filing Copy A of Form 1098-MA for all homeowners satisfies the requirement in Notice 2011–14 to file a single statement with the IRS.

Filers may, at their option, use Copy B of Form 1098-MA to provide homeowners the information required by Notice 2011–14. See section 2.04 of this revenue procedure for the information required by Notice 2011–14.

.03 Filers not using Form 1098-MA. Filers who choose not to use Form 1098-MA should provide each homeowner with a statement setting forth the information required by Notice 2011–14, and provide the IRS with a single statement that lists the information for each homeowner required by Notice 2011–14. See section 2.04 of this revenue procedure for the information required by Notice 2011–14.

.04 *Due dates*. Filers must file the single statement (or Copy A of Form 1098-MA) with the IRS by February 28, and furnish the homeowner's statement (or Copy B of Form 1098-MA) to homeowners by January 31, of the year following the calendar year in which the Filer made payments to a mortgage servicer on a homeowner's mortgage.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Notice 2011–14 is modified to (1) specify the IRS office to which State HFAs and HUD should send the statements required by Notice 2011–14, and (2) provide that State HFAs and HUD may, at their option, use IRS Form 1098-MA to satisfy the requirements of Notice 2011–14.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for calendar years 2011 and 2012.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Shareen S. Pflanz of the Of-

Part IV. Items of General Interest

Notice of Proposed Rulemaking by Cross Reference to Temporary Regulation

Deduction for Qualified Film and Television Production Costs

REG-146297-09

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9552) relating to deductions for the costs of producing film and television productions. Those temporary regulations reflect changes to the law made by the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, and affect taxpayers that produce films and television productions within the United States. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by January 17, 2012.

ADDRESSES: Send submissions to: (REG-146297-09), CC:PA:LPD:PR room 5205, 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-146297-09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, DC, or sent electronically via the Federal eRulemaking at www.regulations.gov (IRS Portal REG-146297-09).

FOR **FURTHER INFORMATION** CONTACT: Concerning the reg-Harvey, Bernard P. ulations, (202)622-4930: concerning submissions and to request a hearing, Richard.A.Hurst@irscounsel.treas.gov, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

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) (October 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) (December 21, 2005). Section 502 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Public Law No. 110-343 (122 Stat. 3765) (October 3, 2008) further modified section 181 for film and television productions commencing after December 31, 2007, and extended section 181 to film and television productions commencing before January 1, 2010. Section 181 was extended again to film and television productions commencing before January 1, 2012, by section 744 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law No. 111-312 (December 17, 2010).

Explanation of Provisions

Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) to add regulations under section 181 of the Internal Revenue Code. The temporary regulations provide rules specific to film and television productions commencing on or after January 1, 2008, to reflect the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. The text of those 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. Because these proposed regulations do not impose a

collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking 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 the Treasury Department 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 (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows: Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.181–0 is added as follows:

§1.181–0 Table of contents.

[The text of this proposed amendment to §1.181–0 is the same as the text of

§1.181–0T published elsewhere in this issue of the Bulletin].

Par. 3. Section 1.181-1 is amended by adding paragraphs (a)(1)(ii), (a)(6), (b)(1)(ii), (b)(2)(vi) and (c)(2) to read as follows:

§1.181–1 Deduction for qualified film and television production costs.

- (a) * * * (1) * * *
- (ii) [The text of this proposed amendment to \$1.181-1(a)(1)(ii) is the same as the text for \$1.181-1T(a)(1)(ii) published elsewhere in this issue of the Bulletin].

* * * * *

(6) [The text of this proposed amendment to $\S1.181-1(a)(6)$ is the same as the text for $\S1.181-1T(a)(6)$ published elsewhere in this issue of the Bulletin].

* * * * *

- (b) ***(1) ***
- (ii) [The text of this proposed amendment to §1.181–1(b)(1)(ii) is the same as the text for §1.181T(b)(1)(ii) published elsewhere in this issue of the Bulletin].

* * * * *

(2)* * *

(vi) [The text of this proposed amendment to \$1.181-1(b)(2)(vi) is the same as the text for \$1.181-1T(b)(2)(vi) published elsewhere in this issue of the Bulletin].

* * * * *

(c) * * *

(2) [The text of this proposed amendment to \$1.181-1(c)(2) is the same as the text for \$1.181-1T(c)(2) published elsewhere in this issue of the Bulletin].

Steven T. Miller, Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on October 18, 2011, 8:45 a.m., and published in the issue of the Federal Register for October 19, 2011, 76 F.R. 64879)

Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2011–72

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin November 21, 2011, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

National Heritage Foundation, Inc. Falls Church, VA

Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

Announcement 2011-74

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers. These individuals are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Part 10, and which are published in pamphlet form as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations.

The disciplinary sanctions to be imposed for violation of the regulations are:

Disbarred from practice before the IRS—An individual who is disbarred is not eligible to represent taxpayers before the IRS.

Suspended from practice before the IRS—An individual who is suspended is not eligible to represent taxpayers before the IRS during the term of the suspension.

Censured in practice before the IRS—Censure is a public reprimand. Unlike disbarment or suspension, censure does not affect an individual's eligibility to represent taxpayers before the IRS, but OPR may subject the individual's future

representations to conditions designed to promote high standards of conduct.

Monetary penalty—A monetary penalty may be imposed on an individual who engages in conduct subject to sanction or on an employer, firm, or entity if the individual was acting on its behalf and if it knew, or reasonably should have known, of the individual's conduct.

Disqualification of appraiser—An appraiser who is disqualified is barred from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the IRS.

Under the regulations, attorneys, certified public accountants, enrolled agents,

enrolled actuaries, and enrolled retirement plan agents may not assist, or accept assistance from, individuals who are suspended or disbarred with respect to matters constituting practice (*i.e.*, representation) before the IRS, and they may not aid or abet suspended or disbarred individuals to practice before the IRS.

Disciplinary sanctions are described in these terms:

Disbarred by decision after hearing, Suspended by decision after hearing, Censured by decision after hearing, Monetary penalty imposed after hearing, and Disqualified after hearing—An administrative law judge (ALJ) conducted an evidentiary hearing upon OPR's complaint alleging violation of the regulations and issued a decision imposing one of these sanctions. After 30 days from the issuance of the decision, in the absence of an appeal, the ALJ's decision became the final agency decision.

Disbarred by default decision, Suspended by default decision, Censured by default decision, Monetary penalty imposed by default decision, and Disqualified by default decision—An ALJ, after finding that no answer to OPR's complaint had been filed, granted OPR's motion for a default judgment and issued a decision imposing one of these sanctions.

Disbarment by decision on appeal, Suspended by decision on appeal, Censured by decision on appeal, Monetary penalty imposed by decision on appeal, and Disqualified by decision on appeal—The decision of the ALJ was appealed to the agency appeal authority, acting as the delegate of the Secretary of the Treasury, and the appeal authority issued a decision imposing one of these sanctions.

Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a consent to one of these sanctions and OPR accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual's opportunity, after a stated number of months, to file with OPR a petition for reinstatement affirming compliance with the terms of the consent and affirming current eligibility to practice (i.e., an active professional license or active enrollment status). An enrolled agent or an enrolled retirement plan agent may also offer to resign in order to avoid a disciplinary proceeding.

Suspended by decision in expedited proceeding, Suspended by default decision in expedited proceeding, Suspended by consent in expedited proceeding—OPR instituted an expedited proceeding for suspension (based on cer-

tain limited grounds, including loss of a professional license and criminal convictions).

OPR has authority to disclose the grounds for disciplinary sanctions in these situations: (1) an ALJ or the Secretary's delegate on appeal has issued a decision on or after September 26, 2007, which was the effective date of amendments to the regulations that permit making such decisions publicly available; (2) the individual has settled a disciplinary case by signing OPR's "consent to sanction" form, which requires consenting individuals to admit to one or more violations of the regulations and to consent to the disclosure of the individual's own return information related to the admitted violations (for example, failure to file Federal income tax returns); or (3) OPR has issued a decision in an expedited proceeding for suspension.

Announcements of disciplinary sanctions appear in the Internal Revenue Bulletin at the earliest practicable date. The sanctions announced below are alphabetized first by the names of states and second by the last names of individuals. Unless otherwise indicated, section numbers (e.g., §10.51) refer to the regulations.

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Alabama				
Tuscaloosa	Dionne, Donald L.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from August 25, 2011
Arizona				
Sedona	Kazragis, Gary W.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from August 25, 2011

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
California				
Ventura	Findley, John W.	Attorney	Suspended by default decision in expedited proceeding under \$10.82 (attorney disbarment)	Indefinite from July 22, 2011
Sacramento	Ferris, Frank J.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from August 31, 2011
Canoga Park	Garrett, Jack E.	CPA	Suspended by decision in expedited proceeding under §10.82 (conviction under 26 U.S.C. §7206(2), aiding and assisting the preparation of false U.S. tax return)	Indefinite from August 22, 2011
Agoura Hills	Hasting, Carl D.	CPA	Suspended by decision in expedited proceeding under §10.82 (suspension of CPA license)	Indefinite from September 20, 2011
Oakland	Lenz, Stewart W.	Attorney	Suspended by default decision in expedited proceeding under \$10.82 (attorney disbarment)	Indefinite from August 31, 2011
Oxnard	Mendoza, Ricardo L.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from August 31, 2011
Aurora	O'Donnell, Lawrence	CPA	Suspended by default decision in expedited proceeding under \$10.82 (revocation of CPA license in Colorado)	Indefinite from August 31, 2011
Fort Collins	Walker, Scott N.	Attorney	Suspended by default decision in expedited proceeding under \$10.82 (suspension of attorney license in Colorado)	Indefinite from August 25, 2011
Colorado				
	O'Donnell, Lawrence, See California			
Denver	Pavek, David D.	Attorney	Suspended by decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from August 4, 2011
	Walker, Scott N., See California			

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City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Colorado (Continued))			
Denver	Zodrow, John J.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from August 4, 2011
Massachusetts				
Lawrence	Buck, John K.	Attorney	Suspended by decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from July 22, 2011
Dorchester	Silva, Deanna M.	Attorney	Suspended by default decision in expedited proceeding under \$10.82 (attorney disbarment)	Indefinite from September 29, 2011
Michigan				
Davison	Cochran, Linda D.	Enrolled Agent	Suspended by decision in expedited proceeding under §10.82 (conviction under 26 U.S.C. §7206(a), willfully filing a false U.S. tax return)	Indefinite from July 28, 2011
Missouri				
Platte City	Stover, A. Blair	Attorney	Suspended by default decision in expedited proceeding under §10.82 (injunction against certain activities regarding tax plans)	Indefinite from September 29, 2011
New Jersey				
West Orange	Kirnan, Matthew J.	Attorney	Suspended by decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from July 22, 2011
Bridgewater	Tsai, Stephen	Attorney	Suspended by decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from July 22, 2011
New York				
New York	Auslander, Kenneth J.	Attorney	Suspended by decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from August 10, 2011

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
New York (Continued)			
Mt. Sinai	Buscemi, Lawrence	Attorney	Suspended by decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from July 22, 2011
	Ellis, Scevia S., See Virginia			
Carmel	Leibell III, Vincent L.	Attorney	Suspended by default decision in expedited proceeding under \$10.82 (conviction under 26 U.S.C. \$7206(1), subscribing to false and fraudulent U.S. individual income tax returns; and conviction under 18 U.S.C. \$1503, obstruction of justice)	Indefinite from September 29, 2011
W. Hampton Beach	McVann Jr., Thomas T	Attorney	Suspended by default decision in expedited proceeding under \$10.82 (attorney disbarment)	Indefinite from September 29, 2011
Purchase	Mangone, Anthony J.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from September 29, 2011
Ohio				
Solon	Davis, Scott E.	CPA	Suspended by default decision in expedited proceeding under \$10.82 (conviction under 26 U.S.C. \$7206(2), aiding and assisting the preparation of false U.S. income tax returns)	Indefinite from August 11, 2011

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Oklahoma				
Tulsa	Gordon, George D.	Attorney	Suspended by decision in expedited proceeding under \$10.82 (conviction under 18 U.S.C \$371, conspiracy; 18 U.S.C \$1343 & 2(a), wire fraud, aiding and abetting; 15 U.S.C. \$\$78j(b), 78ff & 17 C.F.R \$240.10b–5, 18 U.S.C. 2(a), securities fraud, aiding and abetting; 18 U.S.C. \$\$1957(a) & 2(a), money laundering, aiding and abetting; 18 U.S.C. \$1001, false statement; 18 U.S.C. \$ 1512(c)(2), obstruction of justice)	Indefinite from August 9, 2011
Texas				
Texarkana	Smith, Terry L.	CPA	Suspended by decision in expedited proceeding under §10.82 (revocation of CPA license)	Indefinite from August 4, 2011
Virginia				
Fairfax	Ellis, Scevia S.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment in New York)	Indefinite from September 29, 2011
Woodbridge	Omozee, Henry O.	CPA	Suspended by decision in expedited proceeding under \$10.82 (conviction under 26 U.S.C. \$7206 (1), making and subscribing false tax returns)	Indefinite from August 4, 2011
Washington				
Alderwood Manor	Mullen, Richard H.	CPA	Suspended by default decision in expedited proceeding under §10.82 (suspension of CPA license)	Indefinite from August 11, 2011

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Wisconsin				
Janesville	Compton, Stephen M.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from August 11, 2011
Fox Point	Goldstein, Harvey J.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from August 11, 2011

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with modified, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with amplified and clarified, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, modified and superseded describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A-Individual.

Acq.—Acquiescence.

B-Individual.

BE-Beneficiary.

BK—Bank.

B.T.A.—Board of Tax Appeals.

C-Individual.

C.B.—Cumulative Bulletin.

CFR-Code of Federal Regulations.

CI—City.

COOP—Cooperative.

Ct.D.—Court Decision. CY-County.

D-Decedent.

DC—Dummy Corporation.

DE—Donee.

Del. Order-Delegation Order.

DISC—Domestic International Sales Corporation.

DR—Donor.

E-Estate.

EE—Employee.

E.O.—Executive Order.

ER-Employer.

ERISA—Employee Retirement Income Security Act.

EX-Executor.

F-Fiduciary.

FC-Foreign Country.

FICA—Federal Insurance Contributions Act.

FISC-Foreign International Sales Company.

FPH—Foreign Personal Holding Company.

F.R.—Federal Register.

FUTA—Federal Unemployment Tax Act.

FX—Foreign corporation.

G.C.M.—Chief Counsel's Memorandum.

GE—Grantee.

GP—General Partner.

GR-Grantor.

IC—Insurance Company.

I.R.B.—Internal Revenue Bulletin.

LE-Lessee.

LP-Limited Partner.

LR—Lessor

M—Minor.

Nonacq.—Nonacquiescence.

O-Organization.

P-Parent Corporation.

PHC—Personal Holding Company.

PO—Possession of the U.S.

PR-Partner.

PRS—Partnership.

PTE—Prohibited Transaction Exemption.

Pub. L.—Public Law.

REIT-Real Estate Investment Trust.

Rev. Proc.—Revenue Procedure.

Rev. Rul.—Revenue Ruling.

S—Subsidiary.

S.P.R.—Statement of Procedural Rules.

Stat.—Statutes at Large.

T—Target Corporation.

T.C.—Tax Court.

T.D. —Treasury Decision.

TFE-Transferee.

TFR—Transferor.

T.I.R.—Technical Information Release.

TP—Taxpayer.

TR—Trust.

TT-Trustee.

U.S.C.—United States Code.

X-Corporation.

Y—Corporation.

Z —Corporation.

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