

## AMENDMENTS

1976—Subsec. (c). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

## EFFECTIVE DATE

Pub. L. 86-779, §6(d), Sept. 14, 1960, 74 Stat. 1001, provided that: “The amendments made by subsections (a), (b), and (c) [enacting this section and amending section 263 of this title] shall apply to taxable years beginning after December 31, 1959.”

### § 181. Treatment of certain qualified film and television and live theatrical productions

#### (a) Election to treat costs as expenses

##### (1) In general

A taxpayer may elect to treat the cost of any qualified film or television production, and any qualified live theatrical production, as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction.

##### (2) Dollar limitation

###### (A) In general

Paragraph (1) shall not apply to so much of the aggregate cost of any qualified film or television production or any qualified live theatrical production as exceeds \$15,000,000.

###### (B) Higher dollar limitation for productions in certain areas

In the case of any qualified film or television production or any qualified live theatrical production the aggregate cost of which is significantly incurred in an area eligible for designation as—

- (i) a low-income community under section 45D, or
- (ii) a distressed county or isolated area of distress by the Delta Regional Authority established under section 2009aa-1 of title 7, United States Code,

subparagraph (A) shall be applied by substituting “\$20,000,000” for “\$15,000,000”.

#### (b) No other deduction or amortization deduction allowable

With respect to the basis of any qualified film or television production or any qualified live theatrical production to which an election is made under subsection (a), no other depreciation or amortization deduction shall be allowable.

#### (c) Election

##### (1) In general

An election under this section with respect to any qualified film or television production or any qualified live theatrical production shall be made in such manner as prescribed by the Secretary and by the due date (including extensions) for filing the taxpayer’s return of tax under this chapter for the taxable year in which costs of the production are first incurred.

##### (2) Revocation of election

Any election made under this section may not be revoked without the consent of the Secretary.

#### (d) Qualified film or television production

For purposes of this section—

#### (1) In general

The term “qualified film or television production” means any production described in paragraph (2) if 75 percent of the total compensation of the production is qualified compensation.

#### (2) Production

##### (A) In general

A production is described in this paragraph if such production is property described in section 168(f)(3).

##### (B) Special rules for television series

In the case of a television series—

- (i) each episode of such series shall be treated as a separate production, and
- (ii) only the first 44 episodes of such series shall be taken into account.

##### (C) Exception

A production is not described in this paragraph if records are required under section 2257 of title 18, United States Code, to be maintained with respect to any performer in such production.

#### (3) Qualified compensation

For purposes of paragraph (1)—

##### (A) In general

The term “qualified compensation” means compensation for services performed in the United States by actors, production personnel, directors, and producers.

##### (B) Participations and residuals excluded

The term “compensation” does not include participations and residuals (as defined in section 167(g)(7)(B)).

#### (e) Qualified live theatrical production

For purposes of this section—

##### (1) In general

The term “qualified live theatrical production” means any production described in paragraph (2) if 75 percent of the total compensation of the production is qualified compensation (as defined in subsection (d)(3)).

#### (2) Production

##### (A) In general

A production is described in this paragraph if such production is a live staged production of a play (with or without music) which is derived from a written book or script and is produced or presented by a taxable entity in any venue which has an audience capacity of not more than 3,000 or a series of venues the majority of which have an audience capacity of not more than 3,000.

##### (B) Touring companies, etc.

In the case of multiple live staged productions—

- (i) for which the election under this section would be allowable to the same taxpayer, and
- (ii) which are—
  - (I) separate phases of a production, or
  - (II) separate simultaneous stagings of the same production in different geo-

graphical locations (not including multiple performance locations of any one touring production),

each such live staged production shall be treated as a separate production.

**(C) Phase**

For purposes of subparagraph (B), the term “phase” with respect to any qualified live theatrical production refers to each of the following, but only if each of the following is treated by the taxpayer as a separate activity for all purposes of this title:

(i) The initial staging of a live theatrical production.

(ii) Subsequent additional stagings or touring of such production which are produced by the same producer as the initial staging.

**(D) Seasonal productions**

**(i) In general**

In the case of a live staged production not described in subparagraph (B) which is produced or presented by a taxable entity for not more than 10 weeks of the taxable year, subparagraph (A) shall be applied by substituting “6,500” for “3,000”.

**(ii) Short taxable years**

For purposes of clause (i), in the case of any taxable year of less than 12 months, the number of weeks for which a production is produced or presented shall be annualized by multiplying the number of weeks the production is produced or presented during such taxable year by 12 and dividing the result by the number of months in such taxable year.

**(E) Exception**

A production is not described in this paragraph if such production includes or consists of any performance of conduct described in section 2257(h)(1) of title 18, United States Code.

**(f) Application of certain other rules**

For purposes of this section, rules similar to the rules of subsections (b)(2) and (c)(4) of section 194 shall apply.

**(g) Termination**

This section shall not apply to qualified film and television productions or qualified live theatrical productions commencing after December 31, 2016.

(Added Pub. L. 108-357, title II, §244(a), Oct. 22, 2004, 118 Stat. 1445; amended Pub. L. 109-135, title IV, §403(e)(1), Dec. 21, 2005, 119 Stat. 2623; Pub. L. 110-343, div. C, title V, §502(a), (b), (d), Oct. 3, 2008, 122 Stat. 3876, 3877; Pub. L. 111-312, title VII, §744(a), Dec. 17, 2010, 124 Stat. 3319; Pub. L. 112-240, title III, §317(a), Jan. 2, 2013, 126 Stat. 2331; Pub. L. 113-295, div. A, title I, §129(a), Dec. 19, 2014, 128 Stat. 4018; Pub. L. 114-113, div. Q, title I, §169(a)-(b)(2), (c), Dec. 18, 2015, 129 Stat. 3067, 3068.)

PRIOR PROVISIONS

A prior section 181, Pub. L. 87-834, §2(c), Oct. 16, 1962, 76 Stat. 970, related to a deduction for unused invest-

ment credit, prior to repeal by Pub. L. 88-272, title II, §203(a)(3)(B), (4), Feb. 26, 1964, 78 Stat. 34, applicable in case of property placed in service after Dec. 31, 1963, with respect to taxable years ending after such date, and in case of property placed in service before Jan. 1, 1964, with respect to taxable years beginning after Dec. 31, 1963.

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2015—Pub. L. 114-113, §169(b)(2)(C), inserted “and live theatrical” after “film and television” in section catchline.

Subsec. (a)(1). Pub. L. 114-113, §169(b)(1), inserted “, and any qualified live theatrical production,” after “any qualified film or television production”.

Subsecs. (a)(2)(A), (B), (b), (c)(1). Pub. L. 114-113, §169(b)(2)(A), inserted “or any qualified live theatrical production” after “qualified film or television production”.

Subsec. (e). Pub. L. 114-113, §169(c)(2), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 114-113, §169(c)(1), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Pub. L. 114-113, §169(b)(2)(B), which directed insertion of “or qualified live theatrical productions” after “qualified film or television productions”, was executed by making the insertion after “qualified film and television productions”, to reflect the probable intent of Congress.

Pub. L. 114-113, §169(a), substituted “December 31, 2016” for “December 31, 2014”.

Subsec. (g). Pub. L. 114-113, §169(c)(1), redesignated subsec. (f) as (g).

2014—Subsec. (f). Pub. L. 113-295 substituted “December 31, 2014” for “December 31, 2013”.

2013—Subsec. (f). Pub. L. 112-240 substituted “December 31, 2013” for “December 31, 2011”.

2010—Subsec. (f). Pub. L. 111-312 substituted “December 31, 2011” for “December 31, 2009”.

2008—Subsec. (a)(2)(A). Pub. L. 110-343, §502(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Paragraph (1) shall not apply to any qualified film or television production the aggregate cost of which exceeds \$15,000,000.”

Subsec. (d)(3)(A). Pub. L. 110-343, §502(d), substituted “actors, production personnel, directors, and producers.” for “actors, directors, producers, and other relevant production personnel.”

Subsec. (f). Pub. L. 110-343, §502(a), substituted “December 31, 2009” for “December 31, 2008”.

2005—Subsec. (d)(2). Pub. L. 109-135 struck out “For purposes of a television series, only the first 44 episodes of such series may be taken into account.” at end of subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C).

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title I, §169(d), Dec. 18, 2015, 129 Stat. 3069, provided that:

“(1) EXTENSION.—The amendment made by subsection (a) [amending this section] shall apply to productions commencing after December 31, 2014.

“(2) MODIFICATIONS.—

“(A) IN GENERAL.—The amendments made by subsections (b) and (c) [amending this section] shall apply to productions commencing after December 31, 2015.

“(B) COMMENCEMENT.—For purposes of subparagraph (A), the date on which a qualified live theatrical production commences is the date of the first public performance of such production for a paying audience.”

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-295, div. A, title I, §129(b), Dec. 19, 2014, 128 Stat. 4018, provided that: “The amendment made by this section [amending this section] shall apply to productions commencing after December 31, 2013.”

## EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-240, title III, §317(b), Jan. 2, 2013, 126 Stat. 2331, provided that: “The amendment made by this section [amending this section] shall apply to productions commencing after December 31, 2011.”

## EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-312, title VII, §744(b), Dec. 17, 2010, 124 Stat. 3319, provided that: “The amendment made by this section [amending this section] shall apply to productions commencing after December 31, 2009.”

## EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. C, title V, §502(e), Oct. 3, 2008, 122 Stat. 3877, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 199 of this title] shall apply to qualified film and television productions commencing after December 31, 2007.

“(2) DEDUCTION.—The amendments made by subsection (c) [amending section 199 of this title] shall apply to taxable years beginning after December 31, 2007.”

## EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nm) of Pub. L. 109-135, set out as a note under section 26 of this title.

## EFFECTIVE DATE

Pub. L. 108-357, title II, §244(c), Oct. 22, 2004, 118 Stat. 1447, provided that: “The amendments made by this section [enacting this section] shall apply to qualified film and television productions (as defined in section 181(d)(1) of the Internal Revenue Code of 1986, as added by this section) commencing after the date of the enactment of this Act [Oct. 22, 2004].”

**[§ 182. Repealed. Pub. L. 99-514, title IV, § 402(a), Oct. 22, 1986, 100 Stat. 2221]**

Section, added Pub. L. 87-834, §21(a), Oct. 16, 1962, 76 Stat. 1063; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, authorized deduction of expenditures by farmers for clearing land.

## EFFECTIVE DATE OF REPEAL

Pub. L. 99-514, title IV, §402(c), Oct. 22, 1986, 100 Stat. 2221, provided that: “The amendments made by this section [amending sections 263 and 1252 of this title and repealing this section] shall apply to amounts paid or incurred after December 31, 1985, in taxable years ending after such date.”

**§ 183. Activities not engaged in for profit**

**(a) General rule**

In the case of an activity engaged in by an individual or an S corporation, if such activity is not engaged in for profit, no deduction attributable to such activity shall be allowed under this chapter except as provided in this section.

**(b) Deductions allowable**

In the case of an activity not engaged in for profit to which subsection (a) applies, there shall be allowed—

(1) the deductions which would be allowable under this chapter for the taxable year without regard to whether or not such activity is engaged in for profit, and

(2) a deduction equal to the amount of the deductions which would be allowable under

this chapter for the taxable year only if such activity were engaged in for profit, but only to the extent that the gross income derived from such activity for the taxable year exceeds the deductions allowable by reason of paragraph (1).

**(c) Activity not engaged in for profit defined**

For purposes of this section, the term “activity not engaged in for profit” means any activity other than one with respect to which deductions are allowable for the taxable year under section 162 or under paragraph (1) or (2) of section 212.

**(d) Presumption**

If the gross income derived from an activity for 3 or more of the taxable years in the period of 5 consecutive taxable years which ends with the taxable year exceeds the deductions attributable to such activity (determined without regard to whether or not such activity is engaged in for profit), then, unless the Secretary establishes to the contrary, such activity shall be presumed for purposes of this chapter for such taxable year to be an activity engaged in for profit. In the case of an activity which consists in major part of the breeding, training, showing, or racing of horses, the preceding sentence shall be applied by substituting “2” for “3” and “7” for “5”.

**(e) Special rule**

**(1) In general**

A determination as to whether the presumption provided by subsection (d) applies with respect to any activity shall, if the taxpayer so elects, not be made before the close of the fourth taxable year (sixth taxable year, in the case of an activity described in the last sentence of such subsection) following the taxable year in which the taxpayer first engages in the activity.

**(2) Initial period**

If the taxpayer makes an election under paragraph (1), the presumption provided by subsection (d) shall apply to each taxable year in the 5-taxable year (or 7-taxable year) period beginning with the taxable year in which the taxpayer first engages in the activity, if the gross income derived from the activity for 3 (or 2 if applicable) or more of the taxable years in such period exceeds the deductions attributable to the activity (determined without regard to whether or not the activity is engaged in for profit).

**(3) Election**

An election under paragraph (1) shall be made at such time and manner, and subject to such terms and conditions, as the Secretary may prescribe.

**(4) Time for assessing deficiency attributable to activity**

If a taxpayer makes an election under paragraph (1) with respect to an activity, the statutory period for the assessment of any deficiency attributable to such activity shall not expire before the expiration of 2 years after the date prescribed by law (determined without extensions) for filing the return of tax