

desires to defer the maximum amount possible in 1979. The maximum amount that A may defer under the plan is the lesser of \$7,500, or 33 $\frac{1}{3}$ % of A's includible compensation (generally the equivalent of 25 percent of gross compensation). Accordingly, the maximum that A may defer for 1979 is \$5,000 [ $\$5,000 = \$20,000 \times .25$ ]. Although A's taxable year 1979 is one of A's last 3 taxable years before the year in which A attains normal retirement age under the plan, A is not able to utilize the catch-up provisions of § 1.457-2(f) in 1979 because only taxable years beginning after December 31, 1978, may be taken into account under those provisions.

*Example 2.* Assume the same facts as in example 1. In A's taxable year 1980, A receives a salary of \$20,000, and elects to defer only \$1,000 under the plan. In A's taxable year 1981, A again receives a salary of \$20,000 and elects to defer the maximum amount permissible under the plan's catch-up provisions prescribed under § 1.457-2(f). The applicable limit on deferrals under the catch-up provision is the lesser of \$15,000 or the sum of the normal plan ceiling for 1981, plus any under-utilized deferrals for any taxable year before 1981. Thus, the maximum amount that A may defer in 1981 is \$9,000, the normal plan ceiling for 1981, \$5,000, plus the under-utilized deferrals for 1980, \$4,000.

*Example 3.* Assume the same facts as in examples 1 and 2. In A's taxable year 1982, the year in which A will attain age 65, normal retirement age under the plan, A desires to defer the maximum amount possible under the plan. For 1982 the normal limitations of § 1.457-2(e) are applicable, and the maximum amount that A may defer is \$5,000, assuming that A's salary for 1982 was again \$20,000. The plan's catch-up provisions prescribed under § 1.457-2(f) are not applicable because 1982 is not a year ending before the year in which A attains normal retirement age.

[T.D. 7836, 47 FR 42338, Sept. 27, 1982]

#### § 1.457-3 Tax treatment of participants where plan is not an eligible plan.

(a) *In general.* If a State (within the meaning of § 1.457-2(c)) provides for a deferral of compensation (after the effective date described in paragraph (c)) under any agreement or arrangement described in § 1.457-2(b) that is not an eligible plan within the meaning of § 1.457-2—

(1) Compensation deferred under the agreement or arrangement shall be includible in the gross income of the participant or beneficiary for the first taxable year in which there is no substantial risk of forfeiture (within the meaning of section 457(e)(3)) of the rights to such compensation,

(2) Earnings credited on the compensation deferred under the agreement or arrangement shall be includible in the gross income of the participant or beneficiary only when paid or made available, provided that the interest of the participant or beneficiary in the assets (including amounts deferred under the plan) of the entity sponsoring the plan is not senior to the entity's general creditors, and

(3) Amounts paid or made available under the plan to a participant or beneficiary shall be taxable to the participant or beneficiary under section 72, relating to annuities.

(b) *Exceptions.* Paragraph (a) does not apply with respect to—

(1) A plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(2) An annuity plan or contract described in section 403,

(3) A qualified bond purchase plan described in section 405(a),

(4) That portion of any plan which consists of a transfer of property described in section 83, and

(5) That portion of any plan which consists of a trust to which section 402(b) applies.

(c) *Effective date.* This section is effective for taxable years beginning after December 31, 1981. For rules applicable in taxable years beginning after December 31, 1978, and before January 1, 1982, see § 1.457-4.

[T.D. 7836, 47 FR 42341, Sept. 27, 1982; 47 FR 46497, Oct. 19, 1982]

#### § 1.457-4 Transitional rules.

(a) *In general.* Subject to the limitations described in paragraphs (b) and (c) of this section, amounts deferred (within the meaning of § 1.457-1(d)(3)) in taxable years beginning after December 31, 1978, and before January 1, 1982 under a plan described in § 1.457-2(b) (including an eligible plan within the meaning of § 1.457-2, but not including a plan described in section 457(e)(2) and § 1.457-3(b)) shall be includible in gross income only for the taxable year in which paid or otherwise made available to the participant or other beneficiary.

(b) *General limitation.* Except as described in paragraph (c) of this section, and excluding amounts deferred in taxable years beginning before January 1,

## § 1.458-1

## 26 CFR Ch. I (4-1-01 Edition)

1979, compensation deferred under one or more plans described in paragraph (a) of this section is excludable from a participant's gross income under this section for a taxable year only to the extent it does not exceed the lesser of—

(1) \$7,500, or

(2) 33 $\frac{1}{3}$ % of the participant's includable compensation (within the meaning of § 1.457-2(e)(2)) for the taxable year, reduced by any amount excludable from the participant's gross income for the taxable year under section 403(b) on account of contributions made by the State (within the meaning of § 1.457-2(c)). For purposes of this paragraph, compensation deferred under a plan shall be taken into account at its value in the plan year in which deferred. However, if the compensation deferred is subject to a substantial risk of forfeiture (as defined in section 457(e)(3)), such compensation shall be taken into account at its value in the plan year in which such compensation is no longer subject to a substantial risk of forfeiture.

(c) *Limited catch-up.* This paragraph (c) applies if all plans described in paragraph (a) of this section in which an individual is a participant are eligible plans within the meaning of § 1.457-2, and the participant's taxable year is a taxable year described in section 457(b)(3) and § 1.457-2(f). In such a case, compensation deferred under the plans for the taxable year is excluded from gross income under paragraph (a) of this section to the extent it does not exceed the amount determined under § 1.457-1(a)(2) or, as applicable, § 1.457-1(a)(3).

(d) *Example.* The provisions of this section may be illustrated by the following example:

*Example.* A is a participant in a State deferred compensation plan that is not an eligible plan within the meaning of § 1.457-2. The plan provides no limitations on the amount of compensation that may be deferred during any taxable year. For the taxable years 1979, 1980, and 1981 A has includable compensation of \$40,000. In each of those years, A has deferred \$10,000 of compensation. Under the transitional rules described in this section, \$7,500 of A's deferrals in each year will be includable in gross income in the taxable year in which paid or made available to A or A's beneficiary. The remaining \$2,500 of each year's deferrals (\$10,000 - \$7,500) are

includable in A's gross income for the deferral year. Thus, \$2,500 is includable in A's gross income for each of the taxable years 1979, 1980, and 1981. The tax treatment of amounts deferred by A in taxable years after 1981 is described in § 1.457-3.

[T.D. 7836, 47 FR 42341, Sept. 27, 1982]

### § 1.458-1 Exclusion for certain returned magazines, paperbacks, or records.

(a) *In general—(1) Introduction.* For taxable years beginning after September 30, 1979, section 458 allows accrual basis taxpayers to elect to use a method of accounting that excludes from gross income some or all of the income attributable to qualified sales during the taxable year of magazines, paperbacks, or records, that are returned before the close of the applicable merchandise return period for that taxable year. Any amount so excluded cannot be excluded or deducted from gross income for the taxable year in which the merchandise is returned to the taxpayer. For the taxable year in which the taxpayer first uses this method of accounting, the taxpayer is not allowed to exclude from gross income amounts attributable to merchandise returns received during the taxable year that would have been excluded from gross income for the prior taxable year had the taxpayer used this method of accounting for that prior year. (See paragraph (e) of this section for rules describing how this amount should be taken into account.) The election to use this method of accounting shall be made in accordance with the rules contained in section 458(c) and in § 1.458-2 and this section. A taxpayer that does not elect to use this method of accounting can reduce income for returned merchandise only for the taxable year in which the merchandise is actually returned unsold by the purchaser.

(2) *Effective date.* While this section is generally effective only for taxable years beginning after August 31, 1984, taxpayers may rely on the provisions of paragraphs (a) through (f) of this section in taxable years beginning after September 30, 1979.

(b) *Definitions—(1) Magazine.* "Magazine" means a publication, usually