

Internal Revenue Service, Treasury

§ 1.280H-0T

(ii) The amount determined under this subdivision (ii) is the product of the following amounts:

(A) The fair market value of the property,

(B) The average of the business/investment use for all taxable years (in

which such property is leased) that precede the first taxable year in which the business use percentage is 50 percent or less, and

(C) The applicable percentage from the following table:

Type of property	First taxable year during lease in which business use percentage is 50% or less											
	1	2	3	4	5	6	7	8	9	10	11	12 and Later
Property with a recovery period of less than 7 years under the alternative depreciation system (Such as computers, trucks and airplanes)	0.0	10.0	22.0	21.2	12.7	12.7	12.7	12.7	12.7	12.7	12.7	12.7
Property with a 7- to 10-year recovery period under the alternative depreciation system (such as recreation property)	0.0	9.3	23.8	31.3	33.8	32.7	31.6	30.5	25.0	15.0	15.0	15.0
Property with a recovery period of more than 10 years under the alternative depreciation system (such as certain property with no class life)	0.0	10.1	26.3	35.4	39.6	40.2	40.8	41.4	37.5	29.2	20.8	12.5

(3) *Example.* The following example illustrates the application of this paragraph (b):

Example. On February 1, 1987, B, a calendar year taxpayer, leases and places in service a computer with a fair market value of \$3,000. The lease is to be for a period of two years. B's qualified business use of the property, which is the only business/investment use, is 80 percent in taxable year 1987, 40 percent in taxable year 1988, and 35 percent in taxable year 1989. B must add an inclusion amount to gross income for taxable year 1988, the first taxable year in which B does not use the computer predominantly for business (*i.e.*, the first taxable year in which B's business use percentage is 50 percent or less). Since 1988 is the second taxable year during the lease, and since the computer has a 5-year recovery period under the General and Alternative Depreciation Systems, the applicable percentage from the table in subdivision (i) of paragraph (b)(2) is -7.2%, and the applicable percentage from the table in subdivision (ii) is 10%. B's inclusion amount is \$154, which is the sum of the amounts determined under subdivisions (i) and (ii) of subparagraph (b)(2) of this paragraph. The amount determined under subdivision (i) is -\$86 [$\$3,000 \times 40\% \times (-7.2\%)$], and the amount determined under subdivision (ii) is \$240 [$\$3,000 \times 80\% \times 10\%$].

[T.D. 8218, 53 FR 29881, Aug. 9, 1988; 53 FR 32821, Aug. 26, 1988, as amended by T.D. 8298, 55 FR 13370, Apr. 12, 1990; Redesignated and amended at T.D. 8473, 58 FR 19060, Apr. 12, 1993]

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This section lists the captions that appear in the temporary regulations under section 280H.

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[T.D. 8205, 53 FR 19711, May 27, 1988]

§ 1.280H-1T Limitation on certain amounts paid to employee-owners by personal service corporations electing alternative taxable years (temporary).

(a) *Introduction.* This section applies to any taxable year that a personal service corporation has a section 444 election in effect (an “applicable election year”). For purposes of this section, the term *personal service corporation* has the same meaning given such term in § 1.441-4T(d).

(b) *Limitation on certain deductions of personal service corporations—(1) In general.* If, for any applicable election year, a personal service corporation does not satisfy the minimum distribution requirement in paragraph (c) of this section, the deduction otherwise allowable under chapter 1 of the Internal Revenue Code of 1986 (the Code) for applicable amounts, as defined in paragraph (b)(4) of this section, shall not exceed the maximum deductible amount, as defined in paragraph (d) of this section.

(2) *Carryover of nondeductible amounts.* Any amount not allowed as a deduction in an applicable election year under paragraph (b)(1) of this section shall be allowed as a deduction in the succeeding taxable year.

(3) *Disallowance inapplicable for certain purposes.* The disallowance of deductions under paragraph (b)(1) of this section shall not apply for purposes of subchapter G of chapter 1 of the Code

(relating to corporations used to avoid income tax on shareholders) nor for determining whether the compensation of employee-owners is reasonable. Thus, for example, in determining whether a personal service corporation is subject to the accumulated earnings tax imposed by section 531, deductions disallowed under paragraph (b)(1) of this section are treated as allowed in computing accumulated taxable income.

(4) *Definition of applicable amount—(i) In general.* For purposes of section 280H and the regulations thereunder, the term *applicable amount* means, with respect to a taxable year, any amount that is otherwise deductible by a personal service corporation in such year and includable at any time, directly or indirectly, in the gross income of a taxpayer that during such year is an employee-owner. Thus, an amount includable in the gross income of an employee-owner will be considered an applicable amount even though such employee owns no stock of the corporation on the date the employee includes the amount in income. See *Example (1)* in paragraph (b)(4)(iii) of this section.

(ii) *Special rule for certain indirect payments.* For purposes of paragraph (b)(4)(i) of this section, amounts are indirectly includable in the gross income of an employee-owner of a personal service corporation that has made a section 444 election (an electing personal service corporation) if the amount is includable in the gross income of—

(A) The spouse (other than a spouse who is legally separated from the partner or shareholder under a decree of divorce or separate maintenance) or child (under age 14) of such employee-owner, or

(B) A corporation more than 50 percent (measured by fair market value) of which is owned in the aggregate by employee-owners (and individuals related under paragraph (b)(4)(ii)(A) of this section to such employee-owners), of the electing personal service corporation, or

(C) A partnership more than 50 percent of the profits and capital of which is owned by employee-owners (and individuals related under paragraph