

Total 25,000

Since Y has incurred the maximum penalty for failure to file its return and statements required for 1982 by the end of calendar year 1983, no further penalty for these failures is imposed.

Example (4). Under section 6039C(c) foreign person Y is required to make a return for calendar year 1982. Y does not file such return on May 15, 1983 and the failure is not due to reasonable cause. No security has been furnished in lieu of filing. All properties owned by Y in 1982 are U.S. real property interests. Y purchased property M in January 1982 when its fair market value was \$10,000. In March, Y purchased property N when its fair market value was \$15,000. In November, Y sold property M for \$20,000. The fair market value of property N on December 31, 1982, was \$20,000. The total of the fair market values of M and N (M as of the date of its sale and N as of December 31, 1982) is \$40,000. The maximum penalty which may be imposed on Y for failure to meet the requirements of section 6093C(c) for any calendar year is the lesser of \$25,000 or 5 percent of the aggregate of the fair market values of the U.S. real property interests owned by Y at any time during such calendar year. Since \$2,000 (5 percent of \$40,000) is less than \$5,750 (25 times 230 days, the number of days in calendar year 1983 for which the failure continues), the maximum penalty which may be imposed on Y in 1983 is \$2,000. Since the maximum penalty for the failure to file the 1982 return is incurred in 1983, no amount may be imposed for Y's continuing failure to file the return for calendar year 1982 during calendar years after 1983.

(h) *Effective date.* This section shall apply to 1980 and subsequent calendar years. The calendar year 1980 shall be treated as beginning on June 19, 1980 and ending on December 31, 1980.

[T.D. 7866, 48 FR 648, Jan. 6, 1983]

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Sec.

- 7.48-1 Election to have investment credit for movie and television films determined in accordance with previous litigation.
- 7.48-2 Election of forty-percent method of determining investment credit for movie and television films placed in service in a taxable year beginning before January 1, 1975.
- 7.48-3 Election to apply the amendments made by sections 804 (a) and (b) of the

Tax Reform Act of 1976 to property described in section 50(a) of the Code.

- 7.57(d)-1 Election with respect to straight line recovery of intangibles.
- 7.105-1 Questions and answers relating to exclusions of certain disability income payments.
- 7.105-2 Substantial gainful activity.
- 7.465-1 Amounts at risk with respect to activities begun prior to effective date; in general.
- 7.465-2 Determination of amount at risk.
- 7.465-3 Allocation of loss for different taxable years.
- 7.465-4 Insufficient records.
- 7.465-5 Examples.
- 7.704-1 Partner's distributive share.
- 7.936-1 Qualified possession source investment income.
- 7.999-1 Computation of the international boycott factor.
- 7.6039A-1 Information regarding carryover basis property acquired from a decedent.
- 7.6041-1 Return of information as to payments of winnings from bingo, keno, and slot machines.

AUTHORITY: 26 U.S.C. 7805, unless otherwise stated.

§ 7.48-1 Election to have investment credit for movie and television films determined in accordance with previous litigation.

(a) *Generally.* Under section 804(c)(3) of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1595), any taxpayer who filed an action in any court of competent jurisdiction before January 1, 1976, for a determination of such taxpayer's rights to investment credit under section 38 of the Internal Revenue Code of 1954 with respect to any film placed in service in any taxable year beginning before January 1, 1975, may elect to have investment credit on all films placed in service in taxable years beginning before January 1, 1975, (except those subject to an election under section 804(e)(2) of the Act), determined as though section 804 of the Act (except section 804(c)(3) of the Act) had not been enacted.

(b) *Manner of making the election.* The election allowed by section 804(c)(3) of the Act may be made by a notification in the form of a letter signed by the taxpayer or an authorized representative of the taxpayer stating:

- (1) The taxpayer's name, address, and identification number;

(2) The taxable years in which the films were placed in service with respect to which the election shall apply; and

(3) The court in which the litigation was commenced and information adequate to identify the particular litigation, for example, the names of the litigants, the date the suit was commenced, and the court case or docket number of the litigation.

The letter should be sent to the Deputy Commissioner of Internal Revenue, Attention: CC:RL:Br2, Room 4617, 1111 Constitution Avenue, N.W., Washington, DC 20224.

(c) *Time for making the election.* The election under section 804(c)(3) of the Act must be made not later than January 3, 1977. If mailed, the cover containing the notification of such election must be postmarked not later than January 3, 1977.

(d) *Revocation of election.* An election under section 804(c)(3) of the Act, once made, shall be irrevocable.

[T.D. 7449, 41 FR 56629, Dec. 29, 1976]

§ 7.48-2 Election of forty-percent method of determining investment credit for movie and television films placed in service in a taxable year beginning before January 1, 1975.

(a) *General rule.* Under section 804(c)(2) of the Tax Reform Act of 1976 (90 Stat. 1595), taxpayers who placed movie or television films (hereinafter referred to as films and tapes) in service during taxable years beginning before January 1, 1975, may elect to have their investment credit on all such films and tapes determined under section 46(c) of the Code using an amount equal to 40 percent of aggregate production costs in lieu of the basis of such property. If the election is made, 100 percent is the applicable percentage used in determining qualified investment under section 46(c) of the Code regardless of actual useful life. The election can be made only with respect to qualified films and tapes that are new section 38 property and the investment credit is allowed only to the extent that a taxpayer has an ownership interest in the film or tape. No investment credit is allowed under section 804(c)(2) of the Act on any film or tape that is not section 38 property or that was pro-

duced and shown exclusively outside of the United States. Thus, no election may be made under this section with respect to a film or tape which is suspension period property to which section 48(h) applies or to a film or tape which is termination period property to which section 49(a) applies. Any investment credit taken on any film or tape subject to the election is not subject to recapture because of an early disposition or because a film or tape otherwise ceases to be section 38 property under section 47(a) of the Code. Thus, there will be no recapture because a film or tape is used outside the United States under section 48(a)(2) of the Code or section 804(c)(1)(C) of the Act, or because of any disposition under section 47(a)(7)(B) of the Code.

(b) *Time and manner of making an election—(1) Time for making the election.* The election under section 804(c)(2) of the Act must be made not later than April 25, 1977.

(2) *Manner of making the election.* An election under this section must be made by filing amended income tax returns for each taxable year beginning before January 1, 1975, in which films and tapes subject to the election were placed in service, together with a statement signed by the taxpayer containing the information described below. The amended returns and the statement must be filed with the district director having audit jurisdiction over the last return filed to which the election relates. Each amended return shall contain a schedule listing by name all films and tapes placed in service during the year to which the amended return relates and setting forth all computations necessary to determine the aggregate production costs of each such film or tape listed and the ownership interest of the taxpayer in each film or tape listed. In the case of a taxpayer which is a partner, shareholder of an electing small business corporation, or beneficiary of a trust or estate, such computations must be adequate to determine the ownership interest of the partnership, electing small business corporation, or trust or estate in each such film or tape, (a taxpayer which is a partner, shareholder,