

**DESCRIPTION OF THE CHAIRMAN'S MARK
FOR THE CONFERENCE COMMITTEE
ON H.R. 4520**

4. Special rules for certain film and television production

Present Law

The modified Accelerated Cost Recovery System ("MACRS") does not apply to certain property, including any motion picture film, video tape, or sound recording, or to any other property if the taxpayer elects to exclude such property from MACRS and the taxpayer properly applies a unit-of-production method or other method of depreciation not expressed in a term of years. Section 197 does not apply to certain intangible property, including property produced by the taxpayer or any interest in a film, sound recording, video tape, book or similar property not acquired in a transaction (or a series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof. Thus, the recovery of the cost of a film, video tape, or similar property that is produced by the taxpayer or is acquired on a "standalone" basis by the taxpayer may not be determined under either the MACRS depreciation provisions or under the section 197 amortization provisions. The cost recovery of such property may be determined under section 167, which allows a depreciation deduction for the reasonable allowance for the exhaustion, wear and tear, or obsolescence of the property. A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. Section 167(g) provides that the cost of motion picture films, sound recordings, copyrights, books, and patents are eligible to be recovered using the income forecast method of depreciation.

Description of Proposal

The proposal would provide an election to deduct the cost of qualifying film and television productions in the year the expenditure is incurred in lieu of capitalizing the cost and recovering it through depreciation allowances.⁵³ The proposal applies only to qualifying film or television productions the aggregate cost of which does not exceed \$15 million.⁵⁴ This threshold is increased \$20 million if a significant amount of the production expenditures are incurred in areas eligible for designation as a low-income community or eligible for designation by the Delta Regional Authority as a distressed county or isolated area of distress. The proposal defines a qualified film or television production as any production of a motion picture (whether released theatrically or directly to video cassette or any other format); miniseries; scripted, dramatic television episode; or movie of the week if at least 75 percent of the total compensation expended on the production are for services performed in the United States.⁵⁵ With respect to property which is one or more episodes in a television series, only the first 44 episodes qualify under the proposal. Qualified property does not include sexually explicit productions as defined by section 2257 of title 18 of the U.S. Code.

Effective Date

The proposal would be effective for qualifying productions commencing after the date of enactment and sunsets for qualifying productions commencing after December 31, 2008. For this purpose, a production is treated as commencing on the first date of principal photography.

Prior Action

Modification of Senate amendment.

⁵³ An election to deduct such costs shall be made in such manner as prescribed by the Secretary and by the due date (including extensions of time) for filing the taxpayer's return of tax for the taxable year in which production costs of such property are first incurred. An election may not be revoked without the consent of the Secretary. The Committee intends that, in the absence of specific guidance by the Secretary, deducting qualifying costs on the appropriate tax return shall constitute a valid election.

⁵⁴ In the case of a film which is co-produced, the \$15 million threshold is applied against aggregate cost of the production to all owners. The benefits of this provision shall be allocated among the owners of a film in a manner that reasonably reflects each owner's proportionate investment in and economic interest in the film.

⁵⁵ The term compensation does not include participations and residuals.