

§ 1.456-4

(b) For purposes of determining the period or periods over which the liability of the taxpayer exists, and for purposes of allocating prepaid dues income to such periods, the taxpayer may aggregate similar transactions during the taxable year in any reasonable manner, provided the method of aggregation and allocation is consistently followed.

[T.D. 6937, 32 FR 16395, Nov. 30, 1967]

§ 1.456-4 Cessation of liability or existence.

(a) If a taxpayer has elected to apply the provisions of section 456 to a trade or business in connection with which prepaid dues income is received, and if the taxpayer's liability to render services or make available membership privileges ends for any reason, as for example, because of the cancellation of a membership then so much of the prepaid dues income attributable to such liability as was not includible in the taxpayer's gross income under section 456 for preceding taxable years shall be included in gross income for the taxable year in which such liability ends. This paragraph shall not apply to amounts includible in gross income under § 1.456-7.

(b) If a taxpayer which has elected to apply the provisions of section 456 ceases to exist, then the prepaid dues income which was not includible in gross income under section 456 for preceding taxable years shall be included in the taxpayer's gross income for the taxable year in which such cessation of existence occurs. This paragraph shall not apply to amounts includible in gross income under § 1.456-7.

(c) If a taxpayer is a party to a transaction to which section 381(a) applies and the taxpayer's method of accounting with respect to prepaid dues income is used by the acquiring corporation under the provisions of section 381(c)(4), then neither the liability nor the existence of the taxpayer shall be deemed to have ended or ceased. In such cases see section 381(c)(4) and the regulations thereunder for the treatment of the portion of prepaid dues income which was not included in gross income under section 456 for preceding taxable years.

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§ 1.456-5 Definitions and other rules.

(a) *Prepaid dues income.* (1) The term "prepaid dues income" means any amount for membership dues includible in gross income which is received by a membership organization in connection with, and is directly attributable to, a liability of the taxpayer to render services or make available membership privileges over a period of time which extends beyond the close of the taxable year in which such amount is received.

(2) For purposes of section 456, prepaid dues income does not include amounts received by a taxpayer in connection with sales of memberships on a prepaid basis where the taxpayer does not have the liability to furnish the services or make available the membership privileges. For example, where a taxpayer has a contract with several membership organizations to sell memberships in such organizations and retains a portion of the amounts received from the sale of such memberships and remits the balance to the membership organizations, the amounts retained by such taxpayer represent commissions and do not constitute prepaid dues income for purposes of section 456.

(b) *Liability.* The term "liability" means a liability of the taxpayer to render services or make available membership privileges over a period of time which does not exceed 36 months. Thus, if during the taxable year a taxpayer sells memberships for more than 36 months and also memberships for 36 months or less, section 456 does not apply to the income from the sale of memberships for more than 36 months. For the purpose of determining the duration of a liability, a bona fide renewal of a membership shall not be considered to be a part of the existing membership.

(c) *Membership organization.* (1) The term "membership organization" means a corporation, association, federation, or other similar organization meeting the following requirements:

(i) It is organized without capital stock of any kind.

(ii) Its charter, bylaws, or other written agreement or contract expressly prohibits the distribution of any part of the net earnings directly or indirectly, in money, property, or services, to any member, and

(iii) No part of the net earnings of which is in fact distributed to any member either directly or indirectly, in money, property, or services.

(2) For purposes of this paragraph an increase in services or reduction in dues to all members shall generally not be considered distributions of net earnings.

(3) If a corporation, association, federation, or other similar organization subsequent to the time it elects to report its prepaid dues income in accordance with the provisions of section 456, (i) issues any kind of capital stock either to any member or nonmember, (ii) amends its charter, bylaws, or other written agreement or contract to permit distributions of its net earnings to any member or, (iii) in fact, distributes any part of its net earnings either in money, property, or services to any member, then immediately after such event the organization shall not be considered a membership organization within the meaning of section 456(e)(3).

(d) *Receipt of prepaid dues income.* For purposes of section 456, prepaid dues income shall be treated as received during the taxable year for which it is includible in gross income under section 451, relating to the general rule for taxable year of inclusion, without regard to section 456.

[T.D. 6937, 32 FR 16395, Nov. 30, 1967]

§ 1.456-6 Time and manner of making election.

(a) *Election without consent.* A taxpayer may make an election under section 456 without the consent of the Commissioner for the first taxable year beginning after December 31, 1960, in which it receives prepaid dues income in the trade or business for which such election is made. The election must be made not later than the time prescribed by law for filing the income tax return for such year (including extensions thereof). The election must be made by means of a statement attached to such return. In addition, there should be attached a copy of a typical membership contract used by the organization and a copy of its charter, bylaws, or other written agreement or contract of organization or association. The statement shall indicate that the taxpayer is electing to apply

the provisions of section 456 to the trade or business, and shall contain the following information:

(1) The taxpayer's name and a description of the trade or business to which the election is to apply.

(2) The method of accounting used for prepaid dues income in the trade or business during the first taxable year for which the election is to be effective and during each of 3 preceding taxable years, and if there was a change in the method of accounting for prepaid dues income during such 3-year period, a detailed explanation of such change including the adjustments necessary to prevent duplications or omissions of income.

(3) Whether any type of deferral method for prepaid dues income has been used during any of the 3 taxable years preceding the first taxable year for which the election is effective. Where any type of such deferral method has been used during this period, an explanation of the method and a schedule showing the amounts received in each such year and the amounts deferred to each succeeding year.

(4) A schedule with appropriate explanations showing:

(i) The total amount of prepaid dues income received in the trade or business in the first taxable year for which the election is effective and the amount of such income to be included in each taxable year in accordance with the election,

(ii) The total amount, if any, of prepayments of dues received in the first taxable year for which the election is effective which are directly attributable to a liability of the taxpayer to render services or make available membership privileges over a period of time in excess of 36 months, and

(iii) The total amount, if any, of prepaid dues income received in the trade or business in—

(a) The taxable year preceding the first taxable year for which the election is effective if all memberships sold by the taxpayer are for periods of 1 year or less,

(b) Each of the 2 taxable years preceding the first taxable year for which the election is effective if any memberships are sold for periods in excess of 1