

**§ 1.456-7**

**26 CFR Ch. I (4-1-04 Edition)**

year but none are sold for periods in excess of 2 years, or

(c) Each of the 3 taxable years preceding the first taxable year for which the election is effective if any memberships are sold for periods in excess of 2 years.

In each case there shall be set forth the amount of such income which would have been includible in each taxable year had the election been effective for the years for which the information is required.

In any case in which prepaid dues income is received from more than one trade or business, the statement shall set forth separately the required information with respect to each trade or business for which the election is made. See paragraph (c) of this section for additional information required to be submitted with the statement if the taxpayer also elects to include in gross income for the taxable year of receipt the entire amount of prepaid dues income attributable to a liability which is to end within 12 months after the date of receipt.

(b) *Election with consent.* A taxpayer may elect with the consent of the Commissioner, to apply the provisions of section 456 to any trade or business in which it receives prepaid dues income. The request for such consent shall be in writing, signed by the taxpayer or its authorized representative, and shall be addressed to the Commissioner of Internal Revenue, Washington, D.C. 20224. The request must be filed on or before the later of the following dates:

(1) 90 days after the beginning of the first taxable year to which the election is to apply, or

(2) February 28, 1968 and should contain the information described in paragraph (a) of this section.

See paragraph (c) of this section for additional information required to be submitted with the request if the taxpayer also elects to include in gross income for the taxable year of receipt the entire amount of prepaid dues income attributable to a liability which is to end within 12 months after the date of receipt.

(c) *“Within 12 months” election.* (1) The “within 12 months” election shall be made by including in the statement required by paragraph (a) of this section

or the request described in paragraph (b) of this section, whichever is applicable, a declaration that the taxpayer elects to include such income in gross income in the taxable year of receipt, and the amount of such income for each taxable year to which the election is to apply which has ended prior to the time such statement or request is filed. If the taxpayer is engaged in more than one trade or business for which the election under section 456 is made, it must include, in such statement or request, a declaration for each trade or business for which it wishes to make the “within 12 months” election.

(2) If the taxpayer does not make the “within 12 months” election for a trade or business at the time it makes the election under paragraph (a) or (b) of this section, but later wishes to make such election, it must apply for permission from the Commissioner. Such application shall be made in accordance with the provisions of section 446(e).

[T.D. 6937, 32 FR 16395, Nov. 30, 1967; 32 FR 17479, Dec. 6, 1967]

**§ 1.456-7 Transitional rule.**

(a) Under section 456(d)(1), a taxpayer making an election under section 456 shall include in its gross income for the first taxable year to which the election applies and for each of the 2 succeeding taxable years not only that portion of prepaid dues income which is includible in gross income for each such taxable year under section 456(a), but also an additional amount equal to that portion of the total prepaid dues income received in each of the 3 taxable years preceding the first taxable year to which the election applies which would have been includible in gross income for such first taxable year and such 2 succeeding taxable years had the election under section 456 been effective during such 3 preceding taxable years. In computing such additional amounts—

(1) In the case of taxpayers who did not include in gross income for the taxable year preceding the first taxable year for which the election is effective, that portion of the prepaid dues income received in such year attributable to a liability which is to end within 12 months after the date of receipt, no effect shall be given to a “within 12

months" election made under paragraph (c) of §1.456-6, and

(2) There shall be taken into account only prepaid dues income arising from a trade or business with respect to which an election is made under section 456 and §1.456-6.

Section 481 and the regulations thereunder shall have no application to the additional amounts includible in gross income under section 456(d) and this section, but section 481 and the regulations thereunder shall apply to prevent other amounts from being duplicated or omitted.

(b) A taxpayer who makes an election with respect to prepaid dues income, and who includes in gross income for any taxable year to which the election applies an additional amount computed under section 456(d)(1) and paragraph (a) of this section, shall be permitted under section 456(d)(2) to deduct for such taxable year and for each of the 4 succeeding taxable years an amount equal to one-fifth of such additional amount, but only to the extent that such additional amount was also included in the taxpayer's gross income for any of the 3 taxable years preceding the first taxable year to which such election applies. The taxpayer shall maintain books and records in sufficient detail to enable the district director to determine upon audit that

the additional amounts were included in the taxpayer's gross income for any of the 3 taxable years preceding such first taxable year. If, however, the taxpayer ceases to exist, as described in paragraph (b) of §1.456-4, and there is included in gross income, under such paragraph, of the year of cessation the entire portion of prepaid dues income not previously includible in gross income under section 456 for preceding taxable years (other than for amounts received prior to the first year for which an election was made), all the amounts not previously deducted under this paragraph shall be permitted as a deduction in the year of cessation of existence.

(c) The provisions of this section may be illustrated by the following example:

*Example.* (1) Assume that X Corporation, a membership organization qualified to make the election under section 456, elects to report its prepaid dues income in accordance with the provisions of section 456 for its taxable year ending December 31, 1961. Assume further that X Corporation receives in the middle of each taxable year \$3,000 of prepaid dues income in connection with a liability to render services over a 3-year period beginning with the date of receipt. Under section 456(a), X Corporation will report income received in 1961 and subsequent years as follows:

Year of receipt	Total receipts	1961	1962	1963	1964	1965	1966	1967	1968
1961	\$3,000	\$500	\$1,000	\$1,000	\$500				
1962	3,000		500	1,000	1,000	\$500			
1963	3,000			500	1,000	1,000	\$500		
1964	3,000				500	1,000	1,000	\$500	
1965	3,000					500	1,000	1,000	\$500
1966	3,000						500	1,000	1,000
1967	3,000							500	1,000
1968	3,000								500
Total reportable under section 456(a)		500	1,500	2,500	3,000	3,000	3,000	3,000	3,000

(2) Under section 456(d) (1), X Corporation must include in its gross income for the first taxable year to which the election applies and for each of the 2 succeeding taxable years, the amounts which would have been

included in those years had the election been effective 3 years earlier. If the election had been effective in 1958, the following amounts received in 1958, 1959, and 1960 would have been reported in 1961 and subsequent years:

Year of receipt	Amount received	Years of including additional amounts		
		1961	1962	1963
1958	\$3,000	\$500		
1959	3,000	1,000	\$500	
1960	3,000	1,000	1,000	\$500

§ 1.457-1

26 CFR Ch. I (4-1-04 Edition)

Year of receipt	Amount re- ceived	Years of including additional amounts		
		1961	1962	1963
Total additional amounts to be included under section 456(d)(1)	2,500	1,500	500	

(3) Having included the additional amounts as required by section 456(d)(1), and assuming such amounts were actually included in gross income in the 3 taxable years preceding the first taxable year for which the election

is effective, X Corporation is entitled to deduct under section 456(d)(2) in the year of inclusion and in each of the succeeding 4 years an amount equal to one-fifth of the amounts included, as follows:

Year of inclusion	Amount	Years of deduction						
		1961	1962	1963	1964	1965	1966	1967
1961 .....	\$2,500	\$500	\$500	\$500	\$500	\$500	.....	.....
1962 .....	1,500	.....	300	300	300	300	\$300	.....
1963 .....	500	.....	.....	100	100	100	100	\$10
Total amount deductible under section 456(d)(2) .....	500	800	900	900	900	400	100	

(4) The net result of the inclusions under section 456(d)(1) and the deductions under

section 456(d)(2) may be summarized as follows:

	1961	1962	1963	1964	1965	1966	1967	1968
Amount includible under section 456(a) .....	\$500	\$1,500	\$2,500	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
Amount includible under section 456(d)(1) .....	2,500	1,500	500	.....	.....	.....	.....	.....
Total .....	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000
Amount deductible under section 456(d)(2) .....	500	800	900	900	900	400	100	.....
Net amount reportable under section 456	2,500	2,200	2,100	2,100	2,100	2,600	2,900	3,000

[T.D. 6937, 32 FR 16396, Nov. 30, 1967]

§ 1.457-1 General overviews of section 457.

Section 457 provides rules for non-qualified deferred compensation plans established by eligible employers as defined under § 1.457-2(d). Eligible employers can establish either deferred compensation plans that are eligible plans and that meet the requirements of section 457(b) and §§ 1.457-3 through 1.457-10, or deferred compensation plans or arrangements that do not meet the requirements of section 457(b) and §§ 1.457-3 through 1.457-10 and that are subject to tax treatment under section 457(f) and § 1.457-11.

[T.D. 9075, 68 FR 41234, July 11, 2003]

§ 1.457-2 Definitions.

This section sets forth the definitions that are used under §§ 1.457-1 through 1.457-11.

(a) *Amount(s) deferred.* *Amount(s) deferred* means the total annual deferrals under an eligible plan in the current and prior years, adjusted for gain or loss. Except as provided at §§ 1.457-4(c)(1)(iii) and 1.457-6(a), amount(s) deferred includes any rollover amount held by an eligible plan as provided under § 1.457-10(e).

(b) *Annual deferral(s)*—(1) *Annual deferral(s)* means, with respect to a taxable year, the amount of compensation deferred under an eligible plan, whether by salary reduction or by nonelective employer contribution. The amount of compensation deferred under an eligible plan is taken into account as an annual deferral in the taxable year of the participant in which deferred, or, if later, the year in which the amount of compensation deferred is no longer subject to a substantial risk of forfeiture.