

it is sold under the conditions described in paragraph (b)(1) of §1.613-4. In addition, a product will be considered to be a raw mineral product if only insubstantial value is added to the product by nonmining processes (or, in the case of oil and gas, by conversion or transportation processes). For example, in the case of a producer of crushed granite poultry grit, both bulk and bagged grit will be deemed to be a raw mineral product for purposes of the selling expense rule set forth in this subparagraph.

(iv) The term *selling expenses*, for purposes of this subparagraph, includes sales management salaries, rent of sales offices, sales clerical expenses, salesmen's salaries, sales commissions and bonuses, advertising expenses, sales traveling expenses, and similar expenses, together with an allocable share of the costs of supporting services, but the term does not include delivery expenses.

(5) Taxes which are taken as a credit rather than as a deduction or which are capitalized shall not be subtracted from the gross income from the property.

(6) Trade association dues paid or incurred by a producer of crude oil or gas or a raw mineral product shall be subtracted from the gross income from the property. See subparagraph (4) (iii) of this paragraph for the definition of the term *raw mineral product*. In addition, a reasonable portion of the trade association dues incurred by a producer of a refined, manufactured, or fabricated product shall also be subtracted from gross income from the property if the activities of the association relate to production, treatment and marketing of the crude oil or gas or raw mineral product. One reasonable method of allocating the trade association dues described in the preceding sentence is an allocation based on the proportion that the direct costs of mining processes and the direct costs of nonmining processes (or in the case of oil and gas, conversion and transportation processes) bear to each other. The foregoing rules shall apply even though one of the principal purposes of an association is to advise, promote, or assist in the production, marketing, or sale of refined, manufactured, or fabricated products.

For example, a reasonable portion of the trade association dues paid to an association which promotes the sale of cement, refined petroleum, or copper products shall be subtracted from gross income from the property.

[T.D. 6955, 33 FR 6968, May 9, 1968. Redesignated by T.D. 7170, 37 FR 5374, Mar. 15, 1972, as amended by T.D. 7170, 37 FR 5381, Mar. 15, 1972]

**§ 1.613-6 Statement to be attached to return when depletion is claimed on percentage basis.**

In addition to the requirements set forth in paragraph (g) of §1.611-2, a taxpayer who claims the percentage depletion deduction under section 613 for any taxable year shall attach to his return for such year a statement setting forth in complete, summary form, with respect to each property for which such deduction is allowable, the following information:

(a) All data necessary for the determination of the *gross income from the property*, as defined in §§1.613-3 from 1.613-4, including:

(1) Amounts paid as rents or royalties including amounts which the recipient treats under section 631(c),

(2) Proportion and amount of bonus excluded, and

(3) Amounts paid to holders of other interests in the mineral deposit.

(b) All additional data necessary for the determination of the *taxable income from the property (computed without the allowance for depletion)*, as defined in §1.613-5.

[T.D. 7170, 37 FR 5382, Mar. 15, 1972]

**§ 1.613-7 Application of percentage depletion rates provided in section 613(b) to certain taxable years ending in 1954.**

(a) *Election of taxpayer*. In the case of any taxable year ending after December 31, 1953, to which the Internal Revenue Code of 1939 is applicable, the taxpayer may elect in accordance with section 613(d) and this section to apply the appropriate percentage depletion rate specified in section 613 in respect of any mineral property (within the meaning of the 1939 Code). In the case of mines, wells, or other natural deposits listed in section 613(b), the election

may be made by the taxpayer irrespective of whether his depletion allowance with respect to the property for the taxable year was computed upon the basis of cost, discovery value, or upon a percentage of gross income from the property. Once made, the election shall be irrevocable with respect to the property for which it is exercised. The election may be made for any mineral property of the taxpayer and need not be made for all such properties. *Gross income from the property* and *net income from the property* shall have the same meaning as those terms are used in 26 CFR (1939) 39.23(m)-1 (Regulations 118).

(b) *Computation of depletion allowance.* The depletion allowance for any taxable year with respect to any property for which the taxpayer makes the election under section 613(d) shall be an amount equal to the sum of:

(1) That portion of a tentative allowance, computed under the provisions of the Internal Revenue Code of 1939 (without regard to paragraph (1) of section 613(d)), which the number of days in the taxable year prior to January 1, 1954, bears to the total number of days in such taxable year; plus

(2) That portion of a tentative allowance, computed by using the appropriate percentage depletion rate specified in section 613(b) (but otherwise computed under the provisions of the Internal Revenue Code of 1939), which the number of days in the taxable year after December 31, 1953, bears to the total number of days in such taxable year

In the case of any taxable year beginning after December 31, 1953, and ending before August 17, 1954, the depletion allowance with respect to any property for which the taxpayer makes the election under section 613(d) shall be computed under the provisions of the Internal Revenue Code of 1939, except that the appropriate percentage depletion rate specified in section 613(b) shall be used. In making such computation, *gross income from the property* and *net income from the property* shall be determined in the same manner as specified in paragraph (a) of this section.

(c) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example 1.* A is a taxpayer who reports income on the basis of a taxable year ending June 30. For the taxable year ended June 30, 1954, A had gross income from a uranium property in the amount of \$100,000 and his depletion allowance was computed with reference to percentage depletion. His net income from this property, for purposes of limiting the depletion allowance, was \$40,000. The 15-percent rate of depletion provided for in the Internal Revenue Code of 1939 for metal mines resulted in a depletion allowance for the taxable year of \$15,000. Percentage depletion computed with reference to the 23-percent rate provided for uranium under section 613(b) is \$23,000 (\$100,000 times 23 percent). However, the allowance computed on this basis is limited to \$20,000 (50 percent of A's net income from the property). If A exercises the election provided for in section 613(d) his depletion allowance for the taxable year is the aggregate of \$7,561.64 (184/365 times \$15,000) plus \$9,917.80 (181/365 times \$20,000) or \$17,479.44

*Example 2.* Assume the same facts as in example 1 except that A's depletion allowance was computed on the basis of cost and amounted to \$17,500. If the election is made, A's allowance for the taxable year is the aggregate of \$8,821.92 (184/365 times \$17,500) plus \$9,917.80 (181/365 times \$20,000) or \$18,739.72.

(d) *Requirement for making election.* (1) The election under section 613(d) shall be made by filing a statement with the district director with whom the income tax return was filed for the taxable year to which the election is applicable. Such statement shall indicate that an election is being made under section 613(d), shall contain a recomputation of the depletion allowance and the tax liability for all taxable years affected by the exercise of the election, and shall be accompanied either by a claim for refund or credit or by an amended return or returns, whichever is appropriate.

(2) If the treatment of any item upon which a tax previously determined was based, or if the application of any provisions of the internal revenue laws with respect to such tax, depends upon the amount of income (e.g., charitable contributions, foreign tax credit, dividends received credit, and medical expenses), readjustment in these particulars will be necessary as part of any recomputation in conformity with the change in the amount of the income which results solely from the making of the election under section 613(d).

(e) *Administrative provisions; etc.* (1) Section 36(b) of the Technical Amendments Act of 1958 (72 Stat. 1633) provides as follows:

*Sec. 36. Percentage depletion rates for certain taxable years ending in 1954. \* \* \**

(b) *Statute of limitations, etc.; interest.* If refund or credit of any overpayment resulting from the application of the amendment made by subsection (a) of this section is prevented on the date of the enactment of this Act, or within 6 months from such date, by the operation of any law or rule of law (other than section 3760 of the Internal Revenue Code of 1939 or section 7121 of the Internal Revenue Code of 1954, relating to closing agreements, and other than section 3761 of the Internal Revenue Code of 1939 or section 7122 of the Internal Revenue Code of 1954, relating to compromises), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within 6 months from such date. No interest shall be paid on any overpayment resulting from the application of the amendment made by subsection (a) of this section.

(2) If refund or credit of any overpayment resulting from the application of section 613(d) is prevented on September 2, 1958, or on or before March 2, 1959, by the operation of any law or rule of law (other than section 3760 of the Internal Revenue Code of 1939 or section 7121 of the Internal Revenue Code of 1954, relating to closing agreements, and other than section 3761 of the Internal Revenue Code of 1939 or section 7122 of the Internal Revenue Code of 1954, relating to compromises), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed on or before March 2, 1959. If such refund or credit is not prevented on or before March 2, 1959, the time for filing claim therefor shall be governed by the rules of law generally applicable to credits and refunds.

(3) The amount of any refund or credit which is allowable by reason of section 613(d) shall not exceed the decrease in income tax liability resulting solely from the application of the percentage rates specified in section 613(b). No interest shall be allowed or paid on any overpayment resulting from the application of section 613(d).

(4) For purposes of this section the *decrease in income tax liability* shall be the amount by which the tax previously determined (as defined in sec-

tion 3801(d) of the Internal Revenue Code of 1939) exceeds the tax as recomputed under section 613(d) and this section.

(f) *Adjustment to basis.* Proper adjustment shall be made to the basis of any property as required by section 113(b)(1) of the Internal Revenue Code of 1939 and 26 CFR (1939) 39.113(b)(1)-1(c) (Regulations 118) to reflect any change in the depletion allowance resulting from the application of section 613(d) of the Internal Revenue Code of 1954.

[T.D. 6500, 25 FR 11737, Nov. 26, 1960. Redesignated by T.D. 7170, 37 FR 5374, Mar. 15, 1972]

**§ 1.613A-0 Limitations on percentage depletion in the case of oil and gas wells; table of contents.**

This section lists the paragraphs contained in §§ 1.613A-0 through 1.613A-7.

*§ 1.613A-1 Post-1974 limitations on percentage depletion in case of oil and gas wells; general rule.*

*§ 1.613A-2 Exemption for certain domestic gas wells.*

*§ 1.613A-3 Exemption for independent producers and royalty owners.*

- (a) General rules.
- (b) Phase-out table.
- (c) Applicable percentage.
- (d) Production in excess of depletable quantity.
  - (1) Primary production.
  - (2) Secondary or tertiary production.
  - (3) Taxable income from the property.
  - (4) Examples.
- (e) Partnerships.
  - (1) General rule.
  - (2) Initial allocation of adjusted basis of oil or gas property among partners.
    - (i) General rule.
    - (ii) Allocation methods.
    - (3) Adjustments by partnership to allocated adjusted bases.
      - (i) Capital expenditures by partnership.
      - (ii) Admission of a new partner or increase in partner's interest.
        - (A) In general.
        - (B) Allocation of basis to contributing partner.
        - (C) Reduction of existing partners' bases.
      - (iii) Determination of aggregate of partners' adjusted bases in the property.
        - (A) In general.
        - (B) Written data.
        - (C) Assumptions.
      - (iv) Withdrawal of partner or decrease in partner's interest.
        - (A) In general.