§ 1.613A–5 Election under section 613A(c)(4).

The election under section 613A(c)(4) is an annual election which the taxpayer may make by claiming percentage depletion deductions for the taxable year based upon such election. The election may be made, on an original or amended tax return or a claim for credit or refund, at any time prior to the expiration of the statutory period (including any extensions thereof) after December 31, 1974, of an interest in an oil or gas property (as defined in §1.613A–7(n)).

(a) Principal value of property demonstrated. In the case of a transfer (as defined in §1.613A–7(m)) after December 31, 1974, of an interest in an oil or gas property (as defined in §1.613A–7(p)), gasoline service stations. Therefore, L was a retailer of oil and gas for the last 122 days of 1976. L’s gross income from the oil property for the taxable year was $150x and L’s taxable income from the property was $30x. L is treated as a retailer with respect to $50x of gross income from the property ($150x–$122/366) and $10x of taxable income from the property ($30x–$122/366). Therefore, L is entitled to percentage depletion with respect to $100x of gross income from the property ($150x minus $50x). However, the allowable percentage depletion is limited by the 50 percent of taxable income from the property limitation to $10x ($20x taxable income ($30x minus $10x)).

Example 15. Corporation M is a partner in Partnership MNO which is the owner of an operating interest in a producing oil property. Corporation P, a retailer of oil and gas, owns 5 percent in value of the stock of Corporation M. Partnership MNO sells its production to Corporation P. Corporation M is retailing oil through Corporation P, a related person, because its share of the oil is being sold on its behalf by the partnership through a retail outlet operated by a person related to Corporation M. Therefore, the exemption under section 613A(c) does not apply to Corporation M.

Example 16. AA and BB are beneficiaries of a trust which is a retailer of oil and gas. AA has an interest in the income of the trust for AA’s lifetime which, actuarially determined, represents more than 5 percent of the beneficial interests in the trust. BB’s interest in the trust, which entitles BB to 5 percent of the corpus of the trust 5 years after AA’s death, represents less than 5 percent of the beneficial interests in the trust prior to AA’s death and represents more than 5 percent after AA’s death. The trust is a related person of AA but not BB while AA is alive. Accordingly, during AA’s lifetime BB is not disqualified from the exemption provided by section 613A(c), but AA is.

Example 17. Assume the same facts as in Example 16, except that AA’s interest in the income of the trust represents 4 percent of the beneficial interests in the trust. AA is disqualified from the exemption provided by section 613A(c) with respect to the income from the trust but not with respect to income from other sources.

(c) Certain refiners excluded. (1) Section 613A(c) and §1.613A–3 shall not apply in the case of any taxpayer who is a refiner as defined in paragraph (a) of §1.613A–7.

(2) The provisions of this paragraph may be illustrated by the following examples:

Example 1. Corporation M owns a refinery which has refinery runs in excess of 50,000 barrels on at least one day during the taxable year. Corporation M also owns a 5 percent interest in Corporation N, owner of producing oil and gas properties. None of Corporation N’s production is sold to Corporation M. The exemption under section 613A(c) does not apply to Corporation N because Corporation M, a related person of Corporation N, engages in the refining of crude oil.

Example 2. A and B are equal partners in Partnership AB, which owns oil and gas producing properties. A owns a refinery which has refinery runs in excess of 50,000 barrels on at least one day during the taxable year and which buys all of Partnership AB’s production. B has no ownership interest in any refinery. B is not a refiner.


§ 1.613A–6 Recordkeeping requirements.

(a) Principal value of property demonstrated. In the case of a transfer (as defined in §1.613A–7(m)) after December 31, 1974, of an interest in an oil or gas property (as defined in §1.613A–7(p)),