plicable to transfers after Dec. 31, 1989, in taxable years ending after such date, with exceptions, and which related to clarification of treatment of amounts excluded under this section, was repealed by Pub. L. 101–73, title XIV, §1401(a)(3)(B), (b)(1), Aug. 9, 1989, 103 Stat. 549.

EFFECTIVE DATE

Section 246(c) of Pub. L. 97–34 provided that: ''The amendment made by section 244 [enacting this section] shall apply to any payment made on or after January 1, 1981.''

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and its functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of Title 12, Banks and Banking.

REPEAL OF PROVISIONS RELATING TO REPEAL OF SPECIAL REORGANIZATION RULES FOR FINANCIAL INSTITUTIONS

Section 1401(b)(1) of Pub. L. 101–73 provided that: ''Section 904 of the Tax Reform Act of 1986 [Pub. L. 99–514, amending section 368 of this title, repealing this section and enacting provisions set out as notes under sections 368 and 597 of this title] (other than subsection (c)(2)(B) thereof [section 904(c)(2)(B) of Pub. L. 99–514, formerly set out as a note above]) is hereby repealed and the Internal Revenue Code of 1986 shall be applied as if the amendments made by such section had not been enacted.''

REFERENCES TO FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Section 1401(c)(7) of Pub. L. 101–73 provided that: ''Any reference to the Federal Savings and Loan Insurance Corporation in section 597 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [Aug. 9, 1989]) shall be treated as including a reference to the Resolution Trust Corporation and the FSLIC Resolution Fund.''

ANNUAL REPORTS ON TRANSACTIONS IN WHICH FEDERAL FINANCIAL ASSISTANCE PROVIDED

Pub. L. 101–73, title XIV, §1403, Aug. 9, 1989, 103 Stat. 551, which required the Secretary of the Treasury to submit annual reports to the Senate and to the Committee on Ways and Means of the House of Representatives on transactions with respect to which Federal financial assistance subject to this section was provided, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 142 of House Document No. 103–7.

[§ 601. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(85), Oct. 4, 1976, 90 Stat. 1778]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 206, related to a special deduction for bank affiliates.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

Subchapter I—Natural Resources

Part
I. Deductions.
[II. Repealed.]
III. Sales and exchanges.
IV. Mineral production payments.
V. Continental shelf areas.

PART I—DEDUCTIONS

Sec.
611. Allowance of deduction for depletion.
612. Basis for cost depletion.
613. Percentage depletion.
613A. Limitations on percentage depletion in case of oil and gas wells.[1]
614. Definition of property.
[615. Repealed.]
616. Development expenditures.
617. Deduction and recapture of certain mining exploration expenditures.

AMENDMENTS

1990—Pub. L. 101–508, title XI, §11801(b)(7), Nov. 5, 1990, 104 Stat. 1388–522, struck out item for part II ''Exclusions from gross income''.

1976—Pub. L. 94–455, title XIX, §1901(b)(21)(H), Oct. 4, 1976, 90 Stat. 1798, struck out item 615 ''Exploration expenditures''.

1969—Pub. L. 91–172, title V, §§503(b), 505(c), Dec. 30, 1969, 83 Stat. 631, 634, added items for parts IV and V.

Pub. L. 91–172, title V, §504(c)(5), Dec. 30, 1969, 83 Stat. 633, substituted ''Pre-1970 exploration expenditures'' for ''Exploration expenditures'' in item 615 and substituted ''Deduction and recapture of certain mining exploration expenditures'' for ''Additional exploration expenditures in the case of domestic mining'' in item 617.

1966—Pub. L. 89–570, §1(d), Sept. 12, 1966, 80 Stat. 762, added item 617.

§ 611. Allowance of deduction for depletion

(a) General rule

In the case of mines, oil and gas wells, other natural deposits, and timber, there shall be allowed as a deduction in computing taxable income a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under regulations prescribed by the Secretary. For purposes of this part, the term ''mines'' includes deposits of waste or residue, the extraction of ores or minerals from which is treated as mining under section 613(c). In any case in which it is ascertained as a result of operations or of development work that the recoverable units are greater or less than the prior estimate thereof, then such prior estimate (but not the basis for depletion) shall be revised and the allowance under this section for subsequent taxable years shall be based on such revised estimate.

(b) Special rules

(1) Leases

In the case of a lease, the deduction under this section shall be equitably apportioned between the lessor and lessee.

(2) Life tenant and remainderman

In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant.

(3) Property held in trust

In the case of property held in trust, the deduction under this section shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the

[1] Editorially supplied. Section 613A added by Pub. L. 94–12 without corresponding amendment of part analysis.

trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

(4) Property held by estate

In the case of an estate, the deduction under this section shall be apportioned between the estate and the heirs, legatees, and devisees on the basis of the income of the estate allocable to each.

(c) Cross reference

For other rules applicable to depreciation of improvements, see section 167.

(Aug. 16, 1954, ch. 736, 68A Stat. 207; Pub. L. 85–866, title I, § 35, Sept. 2, 1958, 72 Stat. 1632; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1958—Subsec. (d)(4). Pub. L. 85–866 substituted ''devisees'' for ''devises''.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

§ 612. Basis for cost depletion

Except as otherwise provided in this subchapter, the basis on which depletion is to be allowed in respect of any property shall be the adjusted basis provided in section 1011 for the purpose of determining the gain upon the sale or other disposition of such property.

(Aug. 16, 1954, ch. 736, 68A Stat. 208.)

§ 613. Percentage depletion

(a) General rule

In the case of the mines, wells, and other natural deposits listed in subsection (b), the allowance for depletion under section 611 shall be the percentage, specified in subsection (b), of the gross income from the property excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 percent (100 percent in the case of oil and gas properties) of the taxpayer's taxable income from the property (computed without allowance for depletion and without the deduction under section 199). For purposes of the preceding sentence, the allowable deductions taken into account with respect to expenses of mining in computing the taxable income from the property shall be decreased by an amount equal to so much of any gain which (1) is treated under section 1245 (relating to gain from disposition of certain depreciable property) as ordinary income, and (2) is properly allocable to the property. In no case shall the allowance for depletion under section 611 be less than it would be if computed without reference to this section.

(b) Percentage depletion rates

The mines, wells, and other natural deposits, and the percentages, referred to in subsection (a) are as follows:

(1) 22 percent

(A) sulphur and uranium; and

(B) if from deposits in the United States—anorthosite, clay, laterite, and nephelite syenite (to the extent that alumina and aluminum compounds are extracted therefrom), asbestos, bauxite, celestite, chromite, corundum, fluorspar, graphite, ilmenite, kyanite, mica, olivine, quartz crystals (radio grade), rutile, block steatite talc, and zircon, and ores of the following metals: antimony, beryllium, bismuth, cadmium, cobalt, columbium, lead, lithium, manganese, mercury, molybdenum, nickel, platinum and platinum group metals, tantalum, thorium, tin, titanium, tungsten, vanadium, and zinc.

(2) 15 percent

If from deposits in the United States—

(A) gold, silver, copper, and iron ore, and

(B) oil shale (except shale described in paragraph (5)).

(3) 14 percent

(A) metal mines (if paragraph (1)(B) or (2)(A) does not apply), rock asphalt, and vermiculite; and

(B) if paragraph (1)(B), (5), or (6)(B) does not apply, ball clay, bentonite, china clay, sagger clay, and clay used or sold for use for purposes dependent on its refractory properties.

(4) 10 percent

Asbestos (if paragraph (1)(B) does not apply), brucite, coal, lignite, perlite, sodium chloride, and wollastonite.

(5) 7½ percent

Clay and shale used or sold for use in the manufacture of sewer pipe or brick, and clay, shale, and slate used or sold for use as sintered or burned lightweight aggregates.

(6) 5 percent

(A) gravel, peat, pumice, sand, scoria, shale (except shale described in paragraph (2)(B) or (5)), and stone (except stone described in paragraph (7));

(B) clay used, or sold for use, in the manufacture of drainage and roofing tile, flower pots, and kindred products; and

(C) if from brine wells—bromine, calcium chloride, and magnesium chloride.

(7) 14 percent

All other minerals, including, but not limited to, aplite, barite, borax, calcium carbonates, diatomaceous earth, dolomite, feldspar, fullers earth, garnet, gilsonite, granite, limestone, magnesite, magnesium carbonates, marble, mollusk shells (including clam shells and oyster shells), phosphate rock, potash, quartzite, slate, soapstone, stone (used or sold for use by the mine owner or operator as dimension stone or ornamental stone), thenardite, tripoli, trona, and (if paragraph (1)(B) does not apply) bauxite, flake graphite, fluorspar, lepidolite, mica, spodumene, and talc (including pyrophyllite), except that, unless sold on bid in direct competition with a bona fide bid to sell a mineral listed in paragraph (3), the percentage shall be 5 percent for any such other mineral (other than slate to which paragraph (5) applies) when used, or sold for use, by the mine owner or operator as rip

rap, ballast, road material, rubble, concrete aggregates, or for similar purposes. For purposes of this paragraph, the term ''all other minerals'' does not include—

(A) soil, sod, dirt, turf, water, or mosses;

(B) minerals from sea water, the air, or similar inexhaustible sources; or

(C) oil and gas wells.

For the purposes of this subsection, minerals (other than sodium chloride) extracted from brines pumped from a saline perennial lake within the United States shall not be considered minerals from an inexhaustible source.

(c) Definition of gross income from property

For purposes of this section—

(1) Gross income from the property

The term ''gross income from the property'' means, in the case of a property other than an oil or gas well and other than a geothermal deposit, the gross income from mining.

(2) Mining

The term ''mining'' includes not merely the extraction of the ores or minerals from the ground but also the treatment processes considered as mining described in paragraph (4) (and the treatment processes necessary or incidental thereto), and so much of the transportation of ores or minerals (whether or not by common carrier) from the point of extraction from the ground to the plants or mills in which such treatment processes are applied thereto as is not in excess of 50 miles unless the Secretary finds that the physical and other requirements are such that the ore or mineral must be transported a greater distance to such plants or mills.

(3) Extraction of the ores or minerals from the ground

The term ''extraction of the ores or minerals from the ground'' includes the extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining. The preceding sentence shall not apply to any such extraction of the mineral or ore by a purchaser of such waste or residue or of the rights to extract ores or minerals therefrom.

(4) Treatment processes considered as mining

The following treatment processes where applied by the mine owner or operator shall be considered as mining to the extent they are applied to the ore or mineral in respect of which he is entitled to a deduction for depletion under section 611:

(A) In the case of coal—cleaning, breaking, sizing, dust allaying, treating to prevent freezing, and loading for shipment;

(B) in the case of sulfur recovered by the Frasch process—cleaning, pumping to vats, cooling, breaking, and loading for shipment;

(C) in the case of iron ore, bauxite, ball and sagger clay, rock asphalt, and ores or minerals which are customarily sold in the form of a crude mineral product—sorting, concentrating, sintering, and substantially equivalent processes to bring to shipping grade and form, and loading for shipment;

(D) in the case of lead, zinc, copper, gold, silver, uranium, or fluorspar ores, potash, and ores or minerals which are not customarily sold in the form of the crude mineral product—crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic), cyanidation, leaching, crystallization, precipitation (but not including electrolytic deposition, roasting, thermal or electric smelting, or refining), or by substantially equivalent processes or combination of processes used in the separation or extraction of the product or products from the ore or the mineral or minerals from other material from the mine or other natural deposit;

(E) the pulverization of talc, the burning of magnesite, the sintering and nodulizing of phosphate rock, the decarbonation of trona, and the furnacing of quicksilver ores;

(F) in the case of calcium carbonates and other minerals when used in making cement—all processes (other than preheating of the kiln feed) applied prior to the introduction of the kiln feed into the kiln, but not including any subsequent process;

(G) in the case of clay to which paragraph (5) or (6)(B) of subsection (b) applies—crushing, grinding, and separating the mineral from waste, but not including any subsequent process;

(H) in the case of oil shale—extraction from the ground, crushing, loading into the retort, and retorting (including in situ retorting), but not hydrogenation, refining, or any other process subsequent to retorting; and

(I) any other treatment process provided for by regulations prescribed by the Secretary which, with respect to the particular ore or mineral, is not inconsistent with the preceding provisions of this paragraph.

(5) Treatment processes not considered as mining

Unless such processes are otherwise provided for in paragraph (4) (or are necessary or incidental to processes so provided for), the following treatment processes shall not be considered as ''mining'': electrolytic deposition, roasting, calcining, thermal or electric smelting, refining, polishing, fine pulverization, blending with other materials, treatment effecting a chemical change, thermal action, and molding or shaping.

(d) Denial of percentage depletion in case of oil and gas wells

Except as provided in section 613A, in the case of any oil or gas well, the allowance for depletion shall be computed without reference to this section.

(e) Percentage depletion for geothermal deposits

(1) In general

In the case of geothermal deposits located in the United States or in a possession of the United States, for purposes of subsection (a)—

(A) such deposits shall be treated as listed in subsection (b), and

(B) 15 percent shall be deemed to be the percentage specified in subsection (b).

(2) Geothermal deposit defined

For purposes of paragraph (1), the term ''geothermal deposit'' means a geothermal reservoir consisting of natural heat which is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure). Such a deposit shall in no case be treated as a gas well for purposes of this section or section 613A, and this section shall not apply to a geothermal deposit which is located outside the United States or its possessions.

(3) Percentage depletion not to include lease bonuses, etc.

In the case of any geothermal deposit, the term ''gross income from the property'' shall, for purposes of this section, not include any amount described in section 613A(d)(5).

(Aug. 16, 1954, ch. 736, 68A Stat. 208; Pub. L. 85–866, title I, §36(a), Sept. 2, 1958, 72 Stat. 1633; Pub. L. 86–564, title III, §302(a), (b), June 30, 1960, 74 Stat. 291, 292; Pub. L. 87–834, §13(e), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 88–571, §6(a), Sept. 2, 1964, 78 Stat. 860; Pub. L. 89–809, title II, §§207(a), 208(a), 209(a), (b), Nov. 13, 1966, 80 Stat. 1579, 1580; Pub. L. 91–172, title V, §§501(a), 502(a), Dec. 30, 1969, 83 Stat. 629, 630; Pub. L. 93–499, §2(a), Oct. 29, 1974, 88 Stat. 1550; Pub. L. 94–12, title V, §501(b)(1), (2), Mar. 29, 1975, 89 Stat. 53; Pub. L. 94–455, title XIX, §§1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1793, 1834; Pub. L. 95–618, title IV, §403(a)(1), (2)(A), Nov. 9, 1978, 92 Stat. 3203; Pub. L. 99–514, title IV, §412(a)(2), Oct. 22, 1986, 100 Stat. 2227; Pub. L. 101–508, title XI, §§11522(a), 11815(b)(1), (2), Nov. 5, 1990, 104 Stat. 1388–486, 1388–557, 1388–558; Pub. L. 104–188, title I, §1704(t)(34), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 108–357, title I, §102(d)(6), Oct. 22, 2004, 118 Stat. 1429; Pub. L. 109–135, title IV, §412(gg), Dec. 21, 2005, 119 Stat. 2639.)

AMENDMENTS

2005—Subsec. (c)(4)(H). Pub. L. 109–135 inserted ''(including in situ retorting)'' after ''and retorting''.

2004—Subsec. (a). Pub. L. 108–357, which directed the insertion of ''and without the deduction under section 199'' after ''without allowances for depletion'', was executed by making the insertion after ''without allowance for depletion'', to reflect the probable intent of Congress.

1996—Subsec. (e)(1)(B). Pub. L. 104–188 substituted ''subsection (b).'' for ''subsection (b),''.

1990—Subsec. (a). Pub. L. 101–508, §11522(a), inserted ''(100 percent in the case of oil and gas properties)'' after ''50 percent''.

Subsec. (e)(1)(B). Pub. L. 101–508, §11815(b)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the applicable percentage (determined under the table contained in paragraph (2)) shall be deemed to be the percentage specified in subsection (b).''

Subsec. (e)(2) to (4). Pub. L. 101–508, §11815(b)(1), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which related to the applicable percentage depletion for geothermal deposits.

1986—Subsec. (e)(4). Pub. L. 99–514 added par. (4).

1978—Subsec. (c)(1). Pub. L. 95–618, §403(a)(2)(A), inserted ''and other than a geothermal deposit'' after ''oil or gas well''.

Subsec. (e). Pub. L. 95–618, §403(a)(1), added subsec. (e).

1976—Subsec. (a). Pub. L. 94–455, §1901(b)(3)(K), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231''.

Subsec. (c)(2), (4)(I). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1975—Subsec. (b)(1). Pub. L. 94–12, §501(b)(2)(A), struck out subpar. (A) ''oil and gas wells'' and redesignated former subpars. (B) and (C) as (A) and (B), respectively.

Subsec. (b)(3), (4). Pub. L. 94–12, §501(b)(2)(B), substituted ''(1)(B)'' for ''(1)(C)'' wherever appearing.

Subsec. (b)(7). Pub. L. 94–12, §501(b)(2) (B), (C), substituted ''(1)(B)'' for ''(1)(C)'' in provisions preceding subpar. (A) and added subpar. (C).

Subsec. (d). Pub. L. 94–12, §501(b)(1), substituted provisions denying the percentage depletion allowance in the case of oil and gas wells except as provided in section 613A for provisions governing the application of percentage depletion rates to certain taxable years ending in 1954.

1974—Subsec. (c)(4)(E). Pub. L. 93–499 inserted reference to decarbonation of trona.

1969—Subsec. (b). Pub. L. 91–172, §501(a), reduced the percentage depletion rate on oil and gas wells from 27½ percent to 22 percent, reduced to 22 percent other minerals formerly receiving percentage depletion at a rate of 23 percent, added molybdenum in the category of minerals subject to the 22 percent depletion rate, reduced to 14 percent the rate on minerals formerly receiving depletion at a 15 percent rate except in the case of domestic gold, silver, oil shale, copper, and iron ore, and inserted provision that for percentage depletion purposes, minerals other than sodium chloride, extracted from brine pumped from a saline perennial lake within the United States are not to be considered minerals from an inexhaustible source.

Subsec. (c)(4)(H), (I). Pub. L. 91–172, §502(a), added subpar. (H) and redesignated former subpar. (H) as (I).

1966—Subsec. (b)(2)(B). Pub. L. 89–809, §207(a)(1), inserted ''clay, laterite, and nephelite syenite'' after ''anorthosite''.

Subsec. (b)(3)(B). Pub. L. 89–809, §§207(a)(2), 209(a)(2), substituted ''if neither paragraph (2)(B), (5), or (6)(B) applies'' for ''if paragraph (5)(B) does not apply''.

Subsec. (b)(5). Pub. L. 89–809, §209(a)(1), added par. (5). Former par. (5) redesignated (6).

Subsec. (b)(6). Pub. L. 89–809, §§208(a)(1), 209(a)(1), (3), (4), redesignated par. (5) as (6), struck out ''mollusk shells (including clam shells and oyster shells),'', substituted ''shale (except shale described in paragraph (5)), and stone (except stone described in paragraph (7))'' for ''shale, and stone, except stone described in paragraph (6)'' in subpar. (A), and struck out ''building or paving brick,'' and ''sewer pipe,'' in subpar. (B). Former par. (6) redesignated (7).

Subsec. (b)(7). Pub. L. 89–809, §§208(a)(2), 209(a)(1), (5), redesignated par. (6) as (7) and inserted ''mollusk shells (including clam shells and oyster shells),'' after ''marble,'' and ''(other than slate to which paragraph (5) applies)'' after ''any other such mineral''.

Subsec. (c)(4)(G). Pub. L. 89–809, §209(b), substituted ''paragraph (5) or (6)(B)'' for ''paragraph (5)(B)''.

1964—Subsec. (b)(2)(B), (6). Pub. L. 88–571 inserted ''beryllium'' after ''antimony'' in par. (2)(B), and deleted ''beryl'' after ''bauxite'' in pars. (2)(B) and (6).

1962—Subsec. (a). Pub. L. 87–834 inserted provisions requiring the allowable deductions taken into account with respect to expenses of mining in computing the taxable income from the property to be decreased by an amount equal to so much of any gain which is treated under section 1245 as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231, and is properly allocable to the property.

1960—Subsec. (b)(3). Pub. L. 86–564, §302(a)(1), limited the 15 percent allowance for ball clay, bentonite, china clay, and sagger clay to cases where paragraph (5)(B) does not apply, and authorized a 15 percent allowance, if paragraph (5)(B) does not apply, for clay used or sold for use for purposes dependent on its refractory properties.

Subsec. (b)(5). Pub. L. 86–564, §302(a)(2), substituted provisions authorizing a 5 percent allowance for clay used, or sold for use, in the manufacture of building or

paving brick, drainage and roofing tile, sewer pipe, flower pots, and kindred products for provisions which authorized a 5 percent allowance for brick and tile clay.

Subsec. (b)(6). Pub. L. 86–564, §302(a)(3), struck out provisions which authorized a 15 percent allowance for refractory and fire clay. See subsec. (b)(3) of this section.

Subsec. (c)(2). Pub. L. 86–564, §302(b)(1), substituted ''the treatment processes considered as mining described in paragraph (4) (and the treatment processes necessary or incidental thereto)'' for ''the ordinary treatment processes normally applied by mine owners or operators in order to obtain the commercially marketable mineral product or products'', and ''such treatment processes'' for ''the ordinary treatment processes''.

Subsec. (c)(4). Pub. L. 86–564, §302(b)(2), substituted ''The following treatment processes where applied by the mine owner or operator shall be considered as mining to the extent they are applied to the ore or mineral in respect of which he is entitled to a deduction for depletion under section 611'' for ''The term 'ordinary treatment processes' includes the following'' in opening provisions, included cleaning in subpar. (B), substituted ''ores or minerals which'' for ''minerals which'' and included substantially equivalent processes in subpar. (C), included uranium and minerals which are not customarily sold in the form of the crude mineral product and substituted ''from the ore or the mineral or minerals from other material from the mine or other natural deposit'' for ''from the ore, including the furnacing of quicksilver ores'' in subpar. (D), included the furnacing of quicksilver ores in subpar. (E), and added subpars. (F) to (H).

Subsec. (c)(5). Pub. L. 86–564, §302(b)(2), added par. (5).

1958—Subsec. (d). Pub. L. 85–866 added subsec. (d).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11522(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 613A and 614 of this title] shall apply to taxable years beginning after December 31, 1990.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 412(a)(3) of Pub. L. 99–514 provided that: ''The amendment made by this subsection [amending this section and section 613A of this title] shall apply to amounts received or accrued after August 16, 1986, in taxable years ending after such date.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 403(c) of Pub. L. 95–618 provided that: ''The amendments made by this section [amending this section and sections 613A and 614 of this title] shall take effect on October 1, 1978, and shall apply to taxable years ending on or after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(K) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 effective Jan. 1, 1975, applicable to taxable years ending after Dec. 31, 1974, see section 501(c) of Pub. L. 94–12, set out as an Effective Note under section 613A of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 2(b) of Pub. L. 93–499 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1970.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 501(b) of Pub. L. 91–172 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after October 9, 1969.''

Section 502(b) of Pub. L. 91–172 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 30, 1969].''

EFFECTIVE DATE OF 1966 AMENDMENT

Section 207(b) of Pub. L. 89–809 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 13, 1966].''

Section 208(b) of Pub. L. 89–809 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 13, 1966].''

Section 209(c) of Pub. L. 89–809 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 13, 1966].''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 6(b) of Pub. L. 88–571 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1963.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 302(c) of Pub. L. 86–564, as amended by Pub. L. 86–781, §4, Sept. 14, 1960, 74 Stat. 1018; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a) and (b) [amending this section] shall be applicable only with respect to taxable years beginning after December 31, 1960.

''(2) CALCIUM CARBONATES, ETC.—

''(A) ELECTION FOR PAST YEARS.—In the case of calcium carbonates or other minerals when used in making cement, if an election is made by the taxpayer under subparagraph (C)—

''(i) the amendments made by subsection (b) [amending this section] shall apply to taxable years with respect to which such election is effective and

''(ii) provisions having the same effect as the amendments made by subsection (b) [amending this section] shall be deemed to be included in the Internal Revenue Code of 1939 and shall apply to taxable years with respect to which such election is effective in lieu of the corresponding provisions of such Code.

''(B) YEARS TO WHICH APPLICABLE.—An election made under subparagraph (C) to have the provisions of this paragraph apply shall be effective for all taxable years beginning before January 1, 1961, in respect of which—

''(i) the assessment of a deficiency,

''(ii) the refund or credit of an overpayment, or

''(iii) the commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 7405 of this title],

is not prevented on the date of the enactment of this paragraph [Sept. 14, 1960] by the operation of

any law or rule of law. Such election shall also be effective for any taxable year beginning before January 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before the date of the enactment of this paragraph.

''(C) TIME AND MANNER OF ELECTION.—An election to have the provisions of this paragraph apply shall be made by the taxpayer on or before the 60th day after the date of publication in the Federal Register of final regulations issued under authority of subparagraph (F), and shall be made in such form and manner as the Secretary of the Treasury or his delegate shall prescribe by regulations. Such election, if made, may not be revoked.

''(D) STATUTES OF LIMITATION.—Notwithstanding any other law, the period within which an assessment of a deficiency attributable to the application of the amendments made by subsection (b) [amending this section] may be made with respect to any taxable year to which such amendments apply under an election made under subparagraph (C), and the period within which a claim for refund or credit of an overpayment attributable to the application of such amendments may be made with respect to any such taxable year, shall not expire prior to one year after the last day for making an election under subparagraph (C). An election by a taxpayer under subparagraph (C) shall be considered as a consent to the application of the provisions of this subparagraph.

''(E) TERMS; APPLICABILITY OF OTHER LAWS.—Except where otherwise distinctly expressed or manifestly intended, terms used in this paragraph shall have the same meaning as when used in the Internal Revenue Code of 1986 [this title] (or corresponding provisions of the Internal Revenue Code of 1939) and all provisions of law shall apply with respect to this paragraph as if this paragraph were a part of such Code (or corresponding provisions of the Internal Revenue Code of 1939).

''(F) REGULATIONS.—The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this paragraph.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11815(b)(1), (2) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

ELECTION FOR CLAY AND SHALE USED IN MANUFACTURE OF CLAY PRODUCTS

Pub. L. 87–312, Sept. 26, 1961, 75 Stat. 674, provided for the election of, and procedure for, a differing rate of depletion for clay and shale used in the manufacture of clay products, such election to be effective for all taxable years beginning before Jan. 1, 1961, in respect of which the assessment of a deficiency, a refund or credit of overpayment, or the commencement of a suit for recovery is not prevented on Sept. 26, 1961, by operation of any law or rule of law, and also effective for any taxable year beginning before Jan. 1961, in respect of which an assessment of a deficiency has been made but not collected on or before Sept. 26, 1961.

ELECTION FOR QUARTZITE AND CLAY USED IN PRODUCTION OF REFRACTORY PRODUCTS

Pub. L. 87–321, § 2, Sept. 26, 1961, 75 Stat. 683, provided for an election of, and procedures for, a differing rate of depletion for quartzite and clay used in production of refractory products, such election to be effective on and after Jan. 1, 1951, for all taxable years beginning before Jan. 1, 1961, in respect of which the assessment of a deficiency, the refund or credit of an overpayment, or the commencement of a suit for recovery is not prevented on Sept. 26, 1961, by the operation of any law or rule of law, and also effective on and after Jan. 1, 1951, for any taxable year beginning before Jan. 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before Sept. 26, 1961.

REFUND OR CREDIT OF OVERPAYMENTS; LIMITATIONS; INTEREST

Section 36(b) of Pub. L. 85–866 provided for the filing of a claim within 6 months of Sept. 2, 1958, and for the refund or credit of any overpayment, without interest, if such refund or credit, resulting from the addition of subsec. (d) of this section, was prevented on Sept. 2, 1958, or within 6 months thereof, by the operation of any law or rule of law other than certain specified sections of the Internal Revenue Codes of 1939 and 1954.

§ 613A. Limitations on percentage depletion in case of oil and gas wells

(a) General rule

Except as otherwise provided in this section, the allowance for depletion under section 611 with respect to any oil or gas well shall be computed without regard to section 613.

(b) Exemption for certain domestic gas wells

(1) In general

The allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to—

(A) regulated natural gas, and

(B) natural gas sold under a fixed contract,

and 22 percent shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of that section.

(2) Natural gas from geopressured brine

The allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to any qualified natural gas from geopressured brine, and 10 percent shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of such section.

(3) Definitions

For purposes of this subsection—

(A) Natural gas sold under a fixed contract

The term ''natural gas sold under a fixed contract'' means domestic natural gas sold by the producer under a contract, in effect on February 1, 1975, and at all times thereafter before such sale, under which the price for such gas cannot be adjusted to reflect to any extent the increase in liabilities of the seller for tax under this chapter by reason of the repeal of percentage depletion for gas. Price increases after February 1, 1975, shall be presumed to take increases in tax liabilities into account unless the taxpayer demonstrates to the contrary by clear and convincing evidence.

(B) Regulated natural gas

The term ''regulated natural gas'' means domestic natural gas produced and sold by

the producer, before July 1, 1976, subject to the jurisdiction of the Federal Power Commission, the price for which has not been adjusted to reflect to any extent the increase in liability of the seller for tax under this chapter by reason of the repeal of percentage depletion for gas. Price increases after February 1, 1975, shall be presumed to take increases in tax liabilities into account unless the taxpayer demonstrates the contrary by clear and convincing evidence.

(C) Qualified natural gas from geopressured brine

The term ''qualified natural gas from geopressured brine'' means any natural gas—

(i) which is determined in accordance with section 503 of the Natural Gas Policy Act of 1978 to be produced from geopressured brine, and

(ii) which is produced from any well the drilling of which began after September 30, 1978, and before January 1, 1984.

(c) Exemption for independent producers and royalty owners

(1) In general

Except as provided in subsection (d), the allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to—

(A) so much of the taxpayer's average daily production of domestic crude oil as does not exceed the taxpayer's depletable oil quantity; and

(B) so much of the taxpayer's average daily production of domestic natural gas as does not exceed the taxpayer's depletable natural gas quantity;

and 15 percent shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of that section.

(2) Average daily production

For purposes of paragraph (1)—

(A) the taxpayer's average daily production of domestic crude oil or natural gas for any taxable year, shall be determined by dividing his aggregate production of domestic crude oil or natural gas, as the case may be, during the taxable year by the number of days in such taxable year, and

(B) in the case of a taxpayer holding a partial interest in the production from any property (including an interest held in a partnership) such taxpayer's production shall be considered to be that amount of such production determined by multiplying the total production of such property by the taxpayer's percentage participation in the revenues from such property.

(3) Depletable oil quantity

(A) In general

For purposes of paragraph (1), the taxpayer's depletable oil quantity shall be equal to—

(i) the tentative quantity determined under subparagraph (B), reduced (but not below zero) by

(ii) except in the case of a taxpayer making an election under paragraph (6)(B), the taxpayer's average daily marginal production for the taxable year.

(B) Tentative quantity

For purposes of subparagraph (A), the tentative quantity is 1,000 barrels.

(4) Daily depletable natural gas quantity

For purposes of paragraph (1), the depletable natural gas quantity of any taxpayer for any taxable year shall be equal to 6,000 cubic feet multiplied by the number of barrels of the taxpayer's depletable oil quantity to which the taxpayer elects to have this paragraph apply. The taxpayer's depletable oil quantity for any taxable year shall be reduced by the number of barrels with respect to which an election under this paragraph applies. Such election shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

[(5) Repealed. Pub. L. 101–508, title XI, § 11815(a)(1)(C), Nov. 5, 1990, 104 Stat. 1388–557]

(6) Oil and natural gas produced from marginal properties

(A) In general

Except as provided in subsection (d) and subparagraph (B), the allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to—

(i) so much of the taxpayer's average daily marginal production of domestic crude oil as does not exceed the taxpayer's depletable oil quantity (determined without regard to paragraph (3)(A)(ii)), and

(ii) so much of the taxpayer's average daily marginal production of domestic natural gas as does not exceed the taxpayer's depletable natural gas quantity (determined without regard to paragraph (3)(A)(ii)),

and the applicable percentage shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of that section.

(B) Election to have paragraph apply to pro rata portion of marginal production

If the taxpayer elects to have this subparagraph apply for any taxable year, the rules of subparagraph (A) shall apply to the average daily marginal production of domestic crude oil or domestic natural gas of the taxpayer to which paragraph (1) would have applied without regard to this paragraph.

(C) Applicable percentage

For purposes of subparagraph (A), the term ''applicable percentage'' means the percentage (not greater than 25 percent) equal to the sum of—

(i) 15 percent, plus

(ii) 1 percentage point for each whole dollar by which $20 exceeds the reference price for crude oil for the calendar year preceding the calendar year in which the taxable year begins.

For purposes of this paragraph, the term ''reference price'' means, with respect to any

calendar year, the reference price determined for such calendar year under section 45K(d)(2)(C).

(D) Marginal production

The term ''marginal production'' means domestic crude oil or domestic natural gas which is produced during any taxable year from a property which—

(i) is a stripper well property for the calendar year in which the taxable year begins, or

(ii) is a property substantially all of the production of which during such calendar year is heavy oil.

(E) Stripper well property

For purposes of this paragraph, the term ''stripper well property'' means, with respect to any calendar year, any property with respect to which the amount determined by dividing—

(i) the average daily production of domestic crude oil and domestic natural gas from producing wells on such property for such calendar year, by

(ii) the number of such wells,

is 15 barrel equivalents or less.

(F) Heavy oil

For purposes of this paragraph, the term ''heavy oil'' means domestic crude oil produced from any property if such crude oil had a weighted average gravity of 20 degrees API or less (corrected to 60 degrees Fahrenheit).

(G) Average daily marginal production

For purposes of this subsection—

(i) the taxpayer's average daily marginal production of domestic crude oil or natural gas for any taxable year shall be determined by dividing the taxpayer's aggregate marginal production of domestic crude oil or natural gas, as the case may be, during the taxable year by the number of days in such taxable year, and

(ii) in the case of a taxpayer holding a partial interest in the production from any property (including any interest held in any partnership), such taxpayer's production shall be considered to be that amount of such production determined by multiplying the total production of such property by the taxpayer's percentage participation in the revenues from such property.

(H) Temporary suspension of taxable income limit with respect to marginal production

The second sentence of subsection (a) of section 613 shall not apply to so much of the allowance for depletion as is determined under subparagraph (A) for any taxable year—

(i) beginning after December 31, 1997, and before January 1, 2008, or

(ii) beginning after December 31, 2008, and before January 1, 2012.

(7) Special rules

(A) Production of crude oil in excess of depletable oil quantity

If the taxpayer's average daily production of domestic crude oil exceeds his depletable oil quantity, the allowance under paragraph (1)(A) with respect to oil produced during the taxable year from each property in the United States shall be that amount which bears the same ratio to the amount of depletion which would have been allowable under section 613(a) for all of the taxpayer's oil produced from such property during the taxable year (computed as if section 613 applied to all of such production at the rate specified in paragraph (1) or (6), as the case may be) as his depletable oil quantity bears to the aggregate number of barrels representing the average daily production of domestic crude oil of the taxpayer for such year.

(B) Production of natural gas in excess of depletable natural gas quantity

If the taxpayer's average daily production of domestic natural gas exceeds his depletable natural gas quantity, the allowance under paragraph (1)(B) with respect to natural gas produced during the taxable year from each property in the United States shall be that amount which bears the same ratio to the amount of depletion which would have been allowable under section 613(a) for all of the taxpayers[1] natural gas produced from such property during the taxable year (computed as if section 613 applied to all of such production at the rate specified in paragraph (1) or (6), as the case may be) as the amount of his depletable natural gas quantity in cubic feet bears to the aggregate number of cubic feet representing the average daily production of domestic natural gas of the taxpayer for such year.

(C) Taxable income from the property

If both oil and gas are produced from the property during the taxable year, for purposes of subparagraphs (A) and (B) the taxable income from the property, in applying the taxable income limitation in section 613(a), shall be allocated between the oil production and the gas production in proportion to the gross income during the taxable year from each.

(D) Partnerships

In the case of a partnership, the depletion allowance shall be computed separately by the partners and not by the partnership. The partnership shall allocate to each partner his proportionate share of the adjusted basis of each partnership oil or gas property. The allocation is to be made as of the later of the date of acquisition of the oil or gas property by the partnership, or January 1, 1975. A partner's proportionate share of the adjusted basis of partnership property shall be determined in accordance with his interest in partnership capital or income and, in the case of property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share. Each partner shall separately keep records of his share of the adjusted basis in each oil and gas property of the partnership, adjust such share of the ad-

[1] So in original. Probably should be ''taxpayer's''.

justed basis for any depletion taken on such property, and use such adjusted basis each year in the computation of his cost depletion or in the computation of his gain or loss on the disposition of such property by the partnership. For purposes of section 732 (relating to basis of distributed property other than money), the partnership's adjusted basis in mineral property shall be an amount equal to the sum of the partners' adjusted basis in such property as determined under this paragraph.

(8) Business under common control; members of the same family

(A) Component members of controlled group treated as one taxpayer

For purposes of this subsection, persons who are members of the same controlled group of corporations shall be treated as one taxpayer.

(B) Aggregation of business entities under common control

If 50 percent or more of the beneficial interest in two or more corporations, trusts, or estates is owned by the same or related persons (taking into account only persons who own at least 5 percent of such beneficial interest), the tentative quantity determined under paragraph (3)(B) shall be allocated among all such entities in proportion to the respective production of domestic crude oil during the period in question by such entities.

(C) Allocation among members of the same family

In the case of individuals who are members of the same family, the tentative quantity determined under paragraph (3)(B) shall be allocated among such individuals in proportion to the respective production of domestic crude oil during the period in question by such individuals.

(D) Definition and special rules

For purposes of this paragraph—

(i) the term ''controlled group of corporations'' has the meaning given to such term by section 1563(a), except that section 1563(b)(2) shall not apply and except that ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in section 1563(a),

(ii) a person is a related person to another person if such persons are members of the same controlled group of corporations or if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b), except that for this purpose the family of an individual includes only his spouse and minor children.

(iii) the family of an individual includes only his spouse and minor children, and

(iv) each 6,000 cubic feet of domestic natural gas shall be treated as 1 barrel of domestic crude oil.

(9) Special rule for fiscal year taxpayers

In applying this subsection to a taxable year which is not a calendar year, each portion of such taxable year which occurs during a single calendar year shall be treated as if it were a short taxable year.

(10) Certain production not taken into account

In applying this subsection, there shall not be taken into account the production of natural gas with respect to which subsection (b) applies.

(11) Subchapter S corporations

(A) Computation of depletion allowance at shareholder level

In the case of an S corporation, the allowance for depletion with respect to any oil or gas property shall be computed separately by each shareholder.

(B) Allocation of basis

The S corporation shall allocate to each shareholder his pro rata share of the adjusted basis of the S corporation in each oil or gas property held by the S corporation. The allocation shall be made as of the later of the date of acquisition of the property by the S corporation, or the first day of the first taxable year of the S corporation to which the Subchapter S Revision Act of 1982 applies. Each shareholder shall separately keep records of his share of the adjusted basis in each oil and gas property of the S corporation, adjust such share of the adjusted basis for any depletion taken on such property, and use such adjusted basis each year in the computation of his cost depletion or in the computation of his gain or loss on the disposition of such property by the S corporation. In the case of any distribution of oil or gas property to its shareholders by the S corporation, the corporation's adjusted basis in the property shall be an amount equal to the sum of the shareholders' adjusted bases in such property, as determined under this subparagraph.

(d) Limitations on application of subsection (c)

(1) Limitation based on taxable income

The deduction for the taxable year attributable to the application of subsection (c) shall not exceed 65 percent of the taxpayer's taxable income for the year computed without regard to—

(A) any depletion on production from an oil or gas property which is subject to the provisions of subsection (c),

(B) any deduction allowable under section 199,

(C) any net operating loss carryback to the taxable year under section 172,

(D) any capital loss carryback to the taxable year under section 1212, and

(E) in the case of a trust, any distributions to its beneficiary, except in the case of any trust where any beneficiary of such trust is a member of the family (as defined in section 267(c)(4)) of a settlor who created inter vivos and testamentary trusts for members of the family and such settlor died within the last six days of the fifth month in 1970, and the law in the jurisdiction in which such trust was created requires all or a portion of the gross or net proceeds of any royalty or

other interest in oil, gas, or other mineral representing any percentage depletion allowance to be allocated to the principal of the trust.

If an amount is disallowed as a deduction for the taxable year by reason of application of the preceding sentence, the disallowed amount shall be treated as an amount allowable as a deduction under subsection (c) for the following taxable year, subject to the application of the preceding sentence to such taxable year. For purposes of basis adjustments and determining whether cost depletion exceeds percentage depletion with respect to the production from a property, any amount disallowed as a deduction on the application of this paragraph shall be allocated to the respective properties from which the oil or gas was produced in proportion to the percentage depletion otherwise allowable to such properties under subsection (c).

(2) Retailers excluded

Subsection (c) shall not apply in the case of any taxpayer who directly, or through a related person, sells oil or natural gas (excluding bulk sales of such items to commercial or industrial users), or any product derived from oil or natural gas (excluding bulk sales of aviation fuels to the Department of Defense)—

(A) through any retail outlet operated by the taxpayer or a related person, or

(B) to any person—

(i) obligated under an agreement or contract with the taxpayer or a related person to use a trademark, trade name, or service mark or name owned by such taxpayer or a related person, in marketing or distributing oil or natural gas or any product derived from oil or natural gas, or

(ii) given authority, pursuant to an agreement or contract with the taxpayer or a related person, to occupy any retail outlet owned, leased, or in any way controlled by the taxpayer or a related person.

Notwithstanding the preceding sentence this paragraph shall not apply in any case where the combined gross receipts from the sale of such oil, natural gas, or any product derived therefrom, for the taxable year of all retail outlets taken into account for purposes of this paragraph do not exceed $5,000,000. For purposes of this paragraph, sales of oil, natural gas, or any product derived from oil or natural gas shall not include sales made of such items outside the United States, if no domestic production of the taxpayer or a related person is exported during the taxable year or the immediately preceding taxable year.

(3) Related person

For purposes of this subsection, a person is a related person with respect to the taxpayer if a significant ownership interest in either the taxpayer or such person is held by the other, or if a third person has a significant ownership interest in both the taxpayer and such person. For purposes of the preceding sentence, the term ''significant ownership interest'' means—

(A) with respect to any corporation, 5 percent or more in value of the outstanding stock of such corporation,

(B) with respect to a partnership, 5 percent or more interest in the profits or capital of such partnership, and

(C) with respect to an estate or trust, 5 percent or more of the beneficial interests in such estate or trust.

For purposes of determining a significant ownership interest, an interest owned by or for a corporation, partnership, trust, or estate shall be considered as owned directly both by itself and proportionately by its shareholders, partners, or beneficiaries, as the case may be.

(4) Certain refiners excluded

If the taxpayer or one or more related persons engages in the refining of crude oil, subsection (c) shall not apply to the taxpayer for a taxable year if the average daily refinery runs of the taxpayer and such persons for the taxable year exceed 75,000 barrels. For purposes of this paragraph, the average daily refinery runs for any taxable year shall be determined by dividing the aggregate refinery runs for the taxable year by the number of days in the taxable year.

(5) Percentage depletion not allowed for lease bonuses, etc.

In the case of any oil or gas property to which subsection (c) applies, for purposes of section 613, the term ''gross income from the property'' shall not include any lease bonus, advance royalty, or other amount payable without regard to production from property.

(e) Definitions

For purposes of this section—

(1) Crude oil

The term ''crude oil'' includes a natural gas liquid recovered from a gas well in lease separators or field facilities.

(2) Natural gas

The term ''natural gas'' means any product (other than crude oil) of an oil or gas well if a deduction for depletion is allowable under section 611 with respect to such product.

(3) Domestic

The term ''domestic'' refers to production from an oil or gas well located in the United States or in a possession of the United States.

(4) Barrel

The term ''barrel'' means 42 United States gallons.

(Added Pub. L. 94–12, title V, § 501(a), Mar. 29, 1975, 89 Stat. 47; amended Pub. L. 94–455, title XIX, §§ 1901(a)(86), 1906(b)(13)(A), title XXI, § 2115(a)–(c)(1), (d), (e), Oct. 4, 1976, 90 Stat. 1779, 1834, 1907–1909; Pub. L. 95–30, title I, § 102(b)(7), May 23, 1977, 91 Stat. 138; Pub. L. 95–618, title IV, § 403(a)(2)(B), (b), Nov. 9, 1978, 92 Stat. 3204; Pub. L. 96–603, § 3(a), Dec. 28, 1980, 94 Stat. 3511; Pub. L. 97–354, § 3(a), Oct. 19, 1982, 96 Stat. 1687; Pub. L. 97–448, title II, § 202(d), Jan. 12, 1983, 96 Stat. 2396; Pub. L. 98–369, div. A, title I, §§ 25(b), 71(b), July 18, 1984, 98 Stat. 506, 589; Pub. L. 99–514,

title I, § 104(b)(9), title IV, § 412(a)(1), Oct. 22, 1986, 100 Stat. 2105, 2227; Pub. L. 101–508, title XI, §§ 11521(a), (b), 11522(b)(1), 11523(a), (b), 11815(a), Nov. 5, 1990, 104 Stat. 1388–485 to 1388–487, 1388–557; Pub. L. 104–188, title I, § 1702(e)(2), Aug. 20, 1996, 110 Stat. 1870; Pub. L. 105–34, title IX, § 972(a), Aug. 5, 1997, 111 Stat. 897; Pub. L. 106–170, title V, § 504(a), Dec. 17, 1999, 113 Stat. 1921; Pub. L. 107–147, title VI, § 607(a), Mar. 9, 2002, 116 Stat. 60; Pub. L. 108–311, title III, § 314(a), Oct. 4, 2004, 118 Stat. 1181; Pub. L. 109–58, title XIII, §§ 1322(a)(3)(B), 1328(a), Aug. 8, 2005, 119 Stat. 1011, 1019; Pub. L. 109–135, title IV, § 403(a)(18), Dec. 21, 2005, 119 Stat. 2619; Pub. L. 109–432, div. A, title I, § 118(a), Dec. 20, 2006, 120 Stat. 2942; Pub. L. 110–343, div. B, title II, § 210, Oct. 3, 2008, 122 Stat. 3840; Pub. L. 111–312, title VII, § 706(a), Dec. 17, 2010, 124 Stat. 3311.)

REFERENCES IN TEXT

Section 503 of the Natural Gas Policy Act of 1978, referred to in subsec. (b)(3)(C)(i), which was classified to section 3413 of Title 15, Commerce and Trade, was repealed by Pub. L. 101–60, § 3(b)(5), July 26, 1989, 103 Stat. 159, effective Jan. 1, 1993.

The Subchapter S Revision Act of 1982, referred to in subsec. (c)(11)(B), is Pub. L. 97–354, Oct. 19, 1982, 96 Stat. 1669, which is classified principally to subchapter S (§ 1361 et seq.) of chapter 1 of this title. For complete classification of this Act to the Code, see Short Title of 1982 Amendments note set out under section 1 of this title and Tables.

AMENDMENTS

2010—Subsec. (c)(6)(H)(ii). Pub. L. 111–312 substituted ''January 1, 2012'' for ''January 1, 2010''.

2008—Subsec. (c)(6)(H). Pub. L. 110–343 substituted ''for any taxable year—'' for ''for any taxable year beginning after December 31, 1997, and before January 1, 2008.'' and added cls. (i) and (ii).

2006—Subsec. (c)(6)(H). Pub. L. 109–432 substituted ''2008'' for ''2006''.

2005—Subsec. (c)(6)(C). Pub. L. 109–58, § 1322(a)(3)(B), substituted ''section 45K(d)(2)(C)'' for ''section 29(d)(2)(C)'' in concluding provisions.

Subsec. (d)(1)(B) to (E). Pub. L. 109–135 added subpar. (B) and redesignated former subpars. (B) to (D) as (C) to (E), respectively.

Subsec. (d)(4). Pub. L. 109–58, § 1328(a), reenacted heading without change and amended text of par. (4) generally. Prior to amendment, text read as follows: ''If the taxpayer or a related person engages in the refining of crude oil, subsection (c) shall not apply to such taxpayer if on any day during the taxable year the refinery runs of the taxpayer and such person exceed 50,000 barrels.''

2004—Subsec. (c)(6)(H). Pub. L. 108–311 substituted ''2006'' for ''2004''.

2002—Subsec. (c)(6)(H). Pub. L. 107–147 substituted ''2004'' for ''2002''.

1999—Subsec. (c)(6)(H). Pub. L. 106–170 substituted ''January 1, 2002'' for ''January 1, 2000''.

1997—Subsec. (c)(6)(H). Pub. L. 105–34 added subpar. (H).

1996—Subsec. (c)(3)(A)(i). Pub. L. 104–188 struck out ''the table contained in'' before ''subparagraph (B)''.

1990—Subsec. (c)(1). Pub. L. 101–508, § 11815(a)(1)(A), substituted ''15 percent'' for ''the applicable percentage (determined in accordance with the table contained in paragraph (5))'' in concluding provisions.

Subsec. (c)(3)(A). Pub. L. 101–508, § 11523(b)(2), struck out at end ''Clause (ii) shall not apply after December 31, 1983.''

Subsec. (c)(3)(A)(ii). Pub. L. 101–508, § 11523(b)(1), added cl. (ii) and struck out former cl. (ii) which read as follows: ''the taxpayer's average daily secondary or tertiary production for the taxable year.''

Subsec. (c)(3)(B). Pub. L. 101–508, § 11815(a)(1)(B), amended subpar. (B) generally, substituting present provisions for provisions which set out a phase-out table for determining tentative quantity in barrels.

Subsec. (c)(5). Pub. L. 101–508, § 11815(a)(1)(C), struck out par. (5) which provided table of applicable percentages for purposes of par. (1).

Subsec. (c)(6). Pub. L. 101–508, § 11523(a), amended par. (6) generally, providing for an increase in percentage depletion allowance for marginal production, and substituting provisions relating to oil and gas produced from marginal properties for former provisions which related to oil and gas resulting from secondary or tertiary processes.

Subsec. (c)(7)(A), (B). Pub. L. 101–508, § 11815(a)(2)(A), substituted ''specified in paragraph (1)'' for ''specified in paragraph (5)''.

Subsec. (c)(7)(C). Pub. L. 101–508, § 11522(b)(1), substituted ''taxable income'' for ''50-percent'' before ''limitation''.

Subsec. (c)(7)(E). Pub. L. 101–508, § 11815(a)(1)(C), struck out subpar. (E) which provided special rules relating to production from secondary or tertiary recovery processes.

Subsec. (c)(8)(B), (C). Pub. L. 101–508, § 11815(a)(2)(B), which directed amendment of subpars. (B) and (C) by substituting ''determined under paragraph (3)(B)'' for ''determined under the table contained in paragraph (3)(B)'', was executed by making the substitution for ''determined under the table in paragraph (3)(B)'' as the probable intent of Congress.

Subsec. (c)(9). Pub. L. 101–508, § 11815(a)(2)(B), which directed amendment of par. (9) by substituting ''determined under paragraph (3)(B)'' for ''determined under the table contained in paragraph (3)(B)'', could not be executed because that phrase did not appear after execution of amendment by Pub. L. 101–508, § 11521(a). See below.

Pub. L. 101–508, § 11521(a), redesignated par. (11) as (9) and struck out former par. (9) which related to transfer of oil or gas property.

Subsec. (c)(10). Pub. L. 101–508, § 11521(a), redesignated par. (12) as (10) and struck out former par. (10) which related to transfers by individuals to corporations.

Subsec. (c)(11). Pub. L. 101–508, § 11521(a), redesignated par. (13) as (11). Former par. (11) redesignated (9).

Subsec. (c)(11)(C), (D). Pub. L. 101–508, § 11521(b), struck out subpars. (C) and (D) which related to coordination with the transfer rules of former pars. (9) and (10).

Subsec. (c)(12), (13). Pub. L. 101–508, § 11521(a), redesignated pars. (12) and (13) as (10) and (11), respectively.

1986—Subsec. (d)(1). Pub. L. 99–514, § 104(b)(9), struck out ''(reduced in the case of an individual by the zero bracket amount)'' after ''taxable income'' in introductory provisions.

Subsec. (d)(5). Pub. L. 99–514, § 412(a)(1), added par. (5).

1984—Subsec. (c)(2). Pub. L. 98–369, § 25(b)(1), struck out last sentence providing that in applying this paragraph, there shall not be taken into account any production of crude oil or natural gas resulting from secondary or tertiary processes (as defined in regulations prescribed by the Secretary).

Subsec. (c)(3)(A). Pub. L. 98–369, § 25(b)(2), inserted at end ''Clause (ii) shall not apply after December 31, 1983.''

Subsec. (c)(7)(D). Pub. L. 98–369, § 71(b), substituted ''property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share'' for ''an agreement described in section 704(c)(2) (relating to effect of partnership agreement on contributed property), such share shall be determined by taking such agreement into account'' in fourth sentence.

Subsec. (c)(7)(E). Pub. L. 98–369, § 25(b)(3), inserted at end ''This subparagraph shall not apply after December 31, 1983.''

Subsec. (c)(9)(A). Pub. L. 98–369, § 25(b)(4), substituted ''this subsection'' for ''paragraph (1)''.

1983—Subsec. (c)(10)(E). Pub. L. 97–448, § 202(d)(1), inserted provision that ''oil and gas property'' includes,

in the case of any property, necessary production equipment for such property which is in place when the property is transferred.

Subsec. (d)(2). Pub. L. 97–448, § 202(d)(2), inserted ''(excluding bulk sales of aviation fuels to the Department of Defense)'' after ''any product derived from oil or natural gas''.

1982—Subsec. (c)(13). Pub. L. 97–354 added par. (13).

1980—Subsec. (c)(10) to (12). Pub. L. 96–603 added par. (10) and redesignated former pars. (10) and (11) as (11) and (12), respectively.

1978—Subsec. (b)(1)(C). Pub. L. 95–618, § 403(a)(2)(B), struck out subpar. (C) which related to a computation in accordance with section 613 with respect to any geothermal deposit in the United States or in a possession of the United States which is determined to be a gas well.

Subsec. (b)(2), (3). Pub. L. 95–618, § 403(b)(1), (2), added par. (2), redesignated former par. (2) as (3) and, as so redesignated, added subpar. (C).

1977—Subsec. (d)(1). Pub. L. 95–30 inserted ''(reduced in the case of an individual by the zero bracket amount)'' after ''the taxpayer's taxable income'' in introductory provisions.

1976—Subsec. (b)(1)(C). Pub. L. 94–455, § 1901(a)(86)(A), struck out ''within the meaning of section 613(b)(1)(A)'' after ''determined to be a gas well''.

Subsec. (c)(2), (4). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(6)(A)(i). Pub. L. 94–455, § 1901(a)(86)(B), substituted ''determined without'' for ''determined with''.

Subsec. (c)(7)(D). Pub. L. 94–455, § 2115(c)(1), inserted provision relating to the method to be employed by the partners in computing the depletion allowance.

Subsec. (c)(7)(E). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(9)(B). Pub. L. 94–455, § 2115(b)(1), (e), added cls. (iii) to (vi) and provision following cl. (vi).

Subsec. (d)(1). Pub. L. 94–455, § 2115(b)(2), substituted in subpar. (A) reference to any depletion on production from an oil or gas property which is subject to the provisions of subsection (c) for reference to depletion with respect to production of oil and gas subject to the provisions of subsection (c), and added subpar. (D).

Subsec. (d)(2). Pub. L. 94–455, § 2115(a), inserted ''(excluding bulk sales of such items to commercial or industrial users)'' before '', or any product derived'' and inserted provisions following subpar. (B) relating to the application of this paragraph where combined gross receipts from the sale of oil, natural gas, or any product derived therefrom, for the taxable year of all retail outlets taken into account do not exceed $5,000,000 and relating to the exclusion of sales made outside the United States.

Subsec. (d)(3). Pub. L. 94–455, § 2115(d), inserted provision following subpar. (C) relating to the determination of a significant ownership interest of a corporation, partnership, trust, or estate.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 706(b), Dec. 17, 2010, 124 Stat. 3312, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, § 118(b), Dec. 20, 2006, 120 Stat. 2942, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Amendment by section 1322(a)(3)(B) of Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

Pub. L. 109–58, title XIII, § 1328(b), Aug. 8, 2005, 119 Stat. 1020, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, § 314(b), Oct. 4, 2004, 118 Stat. 1181, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2003.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, § 607(b), Mar. 9, 2002, 116 Stat. 60, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, § 504(b), Dec. 17, 1999, 113 Stat. 1921, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1999.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 972(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11521(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply to transfers after October 11, 1990.''

Amendment by section 11522(b)(1) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11522(c) of Pub. L. 101–508, set out as a note under section 613 of this title.

Section 11523(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1990.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(9) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 412(a)(1) of Pub. L. 99–514 applicable to amounts received or accrued after Aug. 16, 1986, in taxable years ending after such date, see section 412(a)(3) of Pub. L. 99–514, set out as a note under section 613 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 25(c)(2) of Pub. L. 98–369 provided that: ''The amendments made by subsection (b) [amending this section] shall take effect on January 1, 1984.''

Amendment by section 71(b) of Pub. L. 98–369 applicable with respect to property contributed to the partnership after Mar. 31, 1984, in taxable years ending after such date, see section 71(c) of Pub. L. 98–369, set out as a note under section 704 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 202(d)(1) of Pub. L. 97–448 applicable to transfers in taxable years ending after Dec.

31, 1974, but only for purposes of applying this section to periods after Dec. 31, 1979, and amendment by section 202(d)(2) of Pub. L. 97–448 applicable to bulk sales after Sept. 18, 1982, see section 203(b)(3) of Pub. L. 97–448, set out as a note under section 6652 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 3(b) of Pub. L. 96–603, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to transfers in taxable years ending after December 31, 1974, but only for purposes of applying section 613A of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to periods after December 31, 1979.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 effective on Oct. 1, 1978, and applicable to taxable years ending on or after such date, see section 403(c) of Pub. L. 95–618, set out as a note under section 613 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(86) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Section 2115(f) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and sections 703 and 705 of this title] shall take effect on January 1, 1975, and shall apply to taxable years ending after December 31, 1974.''

EFFECTIVE DATE

Section 501(c) of Pub. L. 94–12 provided that: ''The amendments made by this section [enacting this section and amending sections 613 and 703 of this title] shall take effect on January 1, 1975, and shall apply to taxable years ending after December 31, 1974.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11815(a) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSFER OF FUNCTIONS

Federal Power Commission terminated and its functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions which were transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

COORDINATION WITH OTHER PROVISION

Section 403(d) of Pub. L. 95–618 provided that: ''Any allowance for depletion allowed by reason of the amendments made by subsection (b) [amending this section] shall not be treated as a credit, exemption, deduction, or comparable adjustment applicable to the computation of any Federal tax which is specifically allowable with respect to any high-cost natural gas (or category thereof) for purposes of section 107(d) of the Natural Gas Policy Act of 1978 [section 3317(d) of Title 15, Commerce and Trade].''

§ 614. Definition of property

(a) General rule

For the purpose of computing the depletion allowance in the case of mines, wells, and other natural deposits, the term ''property'' means each separate interest owned by the taxpayer in each mineral deposit in each separate tract or parcel of land.

(b) Special rules as to operating mineral interests in oil and gas wells or geothermal deposits

In the case of oil and gas wells or geothermal deposits—

(1) In general

Except as otherwise provided in this subsection—

(A) all of the taxpayer's operating mineral interests in a separate tract or parcel of land shall be combined and treated as one property, and

(B) the taxpayer may not combine an operating mineral interest in one tract or parcel of land with an operating mineral interest in another tract or parcel of land.

(2) Election to treat operating mineral interests as separate properties

If the taxpayer has more than one operating mineral interest in a single tract or parcel of land, he may elect to treat one or more of such operating mineral interests as separate properties. The taxpayer may not have more than one combination of operating mineral interests in a single tract or parcel of land. If the taxpayer makes the election provided in this paragraph with respect to any interest in a tract or parcel of land, each operating mineral interest which is discovered or acquired by the taxpayer in such tract or parcel of land after the taxable year for which the election is made shall be treated—

(A) if there is no combination of interests in such tract or parcel, as a separate property unless the taxpayer elects to combine it with another interest, or

(B) if there is a combination of interests in such tract or parcel, as part of such combination unless the taxpayer elects to treat it as a separate property.

(3) Certain unitization or pooling arrangements

(A) In general

Under regulations prescribed by the Secretary, if one or more of the taxpayer's operating mineral interests participate, under a voluntary or compulsory unitization or pooling agreement, in a single cooperative or unit plan of operation, then for the period of such participation—

(i) they shall be treated for all purposes of this subtitle as one property, and

(ii) the application of paragraphs (1), (2), and (4) in respect of such interests shall be suspended.

(B) Limitation

Subparagraph (A) shall apply to a voluntary agreement only if all the operating

mineral interests covered by such agreement—

(i) are in the same deposit, or are in 2 or more deposits the joint development or production of which is logical from the standpoint of geology, convenience, economy, or conservation, and

(ii) are in tracts or parcels of land which are contiguous or in close proximity.

(C) Special rule in the case of arrangements entered into a taxable years beginning before January 1, 1964

If—

(i) two or more of the taxpayer's operating mineral interests participate under a voluntary or compulsory unitization or pooling agreement entered into in any taxable year beginning before January 1, 1964, in a single cooperative or unit plan of operation,

(ii) the taxpayer, for the last taxable year beginning before January 1, 1964, treated such interests as two or more separate properties, and

(iii) it is determined that such treatment was proper under the law applicable to such taxable year,

such taxpayer may continue to treat such interests in a consistent manner for the period of such participation.

(4) Manner, time, and scope of election

(A) Manner and time

Any election provided in paragraph (2) shall be made for each operating mineral interest, in the manner prescribed by the Secretary by regulations, not later than the time prescribed by law for filing the return (including extensions thereof) for whichever of the following taxable years is the later: The first taxable year beginning after December 31, 1963, or the first taxable year in which any expenditure for development or operation in respect of such operating mineral interest is made by the taxpayer after the acquisition of such interest.

(B) Scope

Any election under paragraph (2) shall be for all purposes of this subtitle and shall be binding on the taxpayer for all subsequent taxable years.

(5) Treatment of certain properties

If, on the day preceding the first day of the first taxable year beginning after December 31, 1963, the taxpayer has any operating mineral interests which he treats under subsection (d) of this section (as in effect before the amendments made by the Revenue Act of 1964), such treatment shall be continued and shall be deemed to have been adopted pursuant to paragraphs (1) and (2) of this subsection (as amended by such Act).

(c) Special rules as to operating mineral interests in mines

(1) Election to aggregate separate interests

Except in the case of oil and gas wells and geothermal deposits, if a taxpayer owns two or more separate operating mineral interests which constitute part or all of an operating unit, he may elect (for all purposes of this subtitle)—

(A) to form an aggregation of, and to treat as one property, all such interests owned by him which comprise any one mine or any two or more mines; and

(B) to treat as a separate property each such interest which is not included within an aggregation referred to in subparagraph (A).

For purposes of this paragraph, separate operating mineral interests which constitute part or all of an operating unit may be aggregated whether or not they are included in a single tract or parcel of land and whether or not they are included in contiguous tracts or parcels. For purposes of this paragraph, a taxpayer may elect to form more than one aggregation of operating mineral interests within any one operating unit; but no aggregation may include any operating mineral interest which is a part of a mine without including all of the operating mineral interests which are a part of such mine in the first taxable year for which the election to aggregate is effective, and any operating mineral interest which thereafter becomes a part of such mine shall be included in such aggregation.

(2) Election to treat a single interest as more than one property

Except in the case of oil and gas wells and geothermal deposits, if a single tract or parcel of land contains a mineral deposit which is being extracted, or will be extracted by means of two or more mines for which expenditures for development or operation have been made by the taxpayer, then the taxpayer may elect to allocate to such mines, under regulations prescribed by the Secretary, all of the tract or parcel of land and of the mineral deposit contained therein, and to treat as a separate property that portion of the tract or parcel of land and of the mineral deposit so allocated to each mine. A separate property formed pursuant to an election under this paragraph shall be treated as a separate property for all purposes of this subtitle (including this paragraph). A separate property so formed may, under regulations prescribed by the Secretary, be included as a part of an aggregation in accordance with paragraphs (1) and (3). The election provided by this paragraph may not be made with respect to any property which is a part of an aggregation formed by the taxpayer under paragraph (1) except with the consent of the Secretary.

(3) Manner and scope of election

The elections provided by paragraphs (1) and (2) shall be made, in accordance with regulations prescribed by the Secretary, not later than the time prescribed for filing the return (including extensions thereof) for the first taxable year—

(A) in which, in the case of an election under paragraph (1), any expenditure for development or operation in respect of the separate operating mineral interest is made by the taxpayer after the acquisition of such interest, or

(B) in which, in the case of an election under paragraph (2), expenditures for development or operation of more than one mine in respect of a property are made by the taxpayer after the acquisition of the property.

An election made under paragraph (1) or (2) for a taxable year shall be binding upon the taxpayer for such year and all subsequent taxable years, except that the Secretary may consent to a different treatment of any interest with respect to which an election has been made.

(d) Operating mineral interests defined

For purposes of this section, the term ''operating mineral interest'' includes only an interest in respect of which the costs of production of the mineral are required to be taken into account by the taxpayer for purposes of computing the taxable income limitation provided for in section 613, or would be so required if the mine, well, or other natural deposit were in the production stage.

(e) Special rule as to nonoperating mineral interests

(1) Aggregation of separate interests

If a taxpayer owns two or more separate nonoperating mineral interests in a single tract or parcel of land or in two or more adjacent tracts or parcels of land, the Secretary shall, on showing by the taxpayer that a principal purpose is not the avoidance of tax, permit the taxpayer to treat (for all purposes of this subtitle) all such mineral interests in each separate kind of mineral deposit as one property. If such permission is granted for any taxable year, the taxpayer shall treat such interests as one property for all subsequent taxable years unless the Secretary consents to a different treatment.

(2) Nonoperating mineral interests defined

For purposes of this subsection, the term ''nonoperating mineral interests'' includes only interests which are not operating mineral interests.

(Aug. 16, 1954, ch. 736, 68A Stat. 210; Pub. L. 85–866, title I, §37(a)–(d), Sept. 2, 1958, 72 Stat. 1633–1637; Pub. L. 88–272, title II, §226(a), (b), Feb. 26, 1964, 78 Stat. 94, 96; Pub. L. 94–455, title XIX, §§1901(a)(87)(A)(i), (B), (C), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1779, 1834; Pub. L. 95–618, title IV, §403(a)(2)(C), (D), Nov. 9, 1978, 92 Stat. 3204; Pub. L. 101–508, title XI, §11522(b)(2), Nov. 5, 1990, 104 Stat. 1388–486.)

REFERENCES IN TEXT

The Revenue Act of 1964, referred to in subsec. (b)(5), is Pub. L. 88–272, Feb. 26, 1964, 78 Stat. 19. For complete classification of this Act to the Code, see Short Title of 1964 Amendments note set out under section 1 of this title and Tables.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–508 substituted ''taxable income'' for ''50 percent''.

1978—Subsec. (b). Pub. L. 95–618, §403(a)(2)(C), inserted ''or geothermal deposits'' after ''gas wells'' in heading and introductory provisions.

Subsec. (c). Pub. L. 95–618, §403(a)(2)(D), substituted ''oil and gas wells and geothermal deposits'' for ''oil and gas wells'' wherever appearing.

1976—Subsecs. (b)(3)(A), (4)(A), (e). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(2). Pub. L. 94–455, §§1901(a)(87)(B), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing and '', but the provisions of paragraph (4) shall not apply with respect to such separate property'' after ''in accordance with paragraphs (1) and (3)''.

Subsec. (c)(3). Pub. L. 94–455, §1901(a)(87)(C), among other changes, struck out references to the first taxable year beginning after Dec. 31, 1957, and provisions relating to elections for taxable years beginning before Jan. 1, 1958, relating to election after final regulations, and relating to statute of limitations.

Subsec. (c)(4). Pub. L. 94–455, §1901(a)(87)(A)(i), struck out par. (4) which related to a special rule as to deductions under section 615(a) of this title prior to aggregation.

1964—Subsec. (b). Pub. L. 88–272, §226(a), amended subsec. (b) generally, and among other changes, substituted provisions stating that except as otherwise provided, all of the taxpayer's operating mineral interests in a separate tract or parcel of land will be combined and treated as one property, that the taxpayer may not combine any operating mineral interest in one tract or parcel of land with an operating mineral interest in another tract or parcel of land, that if he has more than one operating mineral interest in a single tract of land he may elect to treat one or more of such interests as separate properties, limited, however, to one combination of interests in a single tract of land, and providing, in the event the election in par. (2) is made with respect to any tract of land, for the treatment of interests discovered or acquired by the taxpayer in such a tract after the taxable year for which the election is made, for provisions which permitted a taxpayer who owned two or more separate operating mineral interests which constituted all or a part of an operating unit, to elect to form one aggregation and treat as one property any two or more of these interests, treating as separate properties any interests which he did not include in the one aggregation, to aggregate separate interests whether or not in a single tract of land, or contiguous tracts of land, and which forbade him to form more than one aggregation within a single operating unit, inserted provisions in par. (3) relating to unitization or pooling arrangements, and in par (5), providing that if the taxpayer has operating mineral interests on the day preceding the first day of the first taxable year beginning after Dec. 31, 1963, which he treats under subsec. (d) of this section as in effect before amendment by Pub. L. 88–272, he shall continue such treatment and it shall be deemed adopted pursuant to pars. (1) and (2) of this subsection, and struck out provisions defining ''operating mineral interests'', and providing for termination of election with respect to mines, excepting oil and gas wells. For definition of ''operating mineral interests'', see subsec. (d) of this section.

Subsec. (c). Pub. L. 88–272, §226(b)(1), (2), struck out par. (5) which defined operating mineral interests, and ''1958'' before ''Special rules'' in heading.

Subsec. (d). Pub. L. 88–272, §226(b)(3), amended subsec. (d) generally, substituting the definition of operating mineral interests, for provisions relating to the 1939 Code treatment respecting operating mineral interest in case of oil and gas wells.

Subsec. (e)(2). Pub. L. 88–272, §226(b)(4), struck out ''within the meaning of subsection (b)(3)'' at end.

1958—Subsec. (b)(4). Pub. L. 85–866, §37(a), added par. (4).

Subsecs. (c) to (e). Pub. L. 85–866, §37(b)–(d), added subsecs. (c) and (d), redesignated former subsec. (c) as (e), and substituted in first sentence of par. (1) ''or in two or more adjacent tracts'' for ''or in two or more contiguous tracts'' and ''shall, on showing by the taxpayer that a principal purpose is not the avoidance of tax, permit the taxpayer to treat (for all purposes of this subtitle) all such mineral interests in each sepa-

rate kind of mineral deposit as one property'' for ''may, on showing of undue hardship, permit the taxpayer to treat (for all purposes of this subtitle) all such mineral interests as one property''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11522(c) of Pub. L. 101–508, set out as a note under section 613 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 effective Oct. 1, 1978, and applicable to taxable years ending on or after such date, see section 403(c) of Pub. L. 95–618, set out as a note under section 613 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1901(a)(87)(A)(ii) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by clause (i) [amending this section] shall apply with respect to elections to form aggregations of operating mineral interests made under section 614(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for taxable years beginning after December 31, 1976.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 226(d) of Pub. L. 88–272 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 1963.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 37(e) of Pub. L. 85–866 provided that: ''The amendments made by subsections (a) and (c) [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. The amendments made by subsection (b) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957, except that such amendments shall, at the election of the taxpayer made in conformity with such amendments, apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. The amendment made by subsection (d) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957, except that with respect to any taxpayer such amendment shall, at the election of the taxpayer, apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

ALLOCATION OF BASIS IN CERTAIN CASES

Section 226(c) of Pub. L. 88–272, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]—

''(1) FAIR MARKET VALUE RULE.—Except as provided in paragraph (2), if a taxpayer has a section 614(b) aggregation, then the adjusted basis (as of the first day of the first taxable year beginning after December 31, 1963) of each property included in such aggregation shall be determined by multiplying the adjusted basis of the aggregation by a fraction—

''(A) the numerator of which is the fair market value of such property, and

''(B) the denominator of which is the fair market value of such aggregation.

For purposes of this paragraph, the adjusted basis and the fair market value of the aggregation, and the fair market value of each property included therein, shall be determined as of the day preceding the first day of the first taxable year which begins after December 31, 1963.

''(2) ALLOCATION OF ADJUSTMENTS, ETC.—If the taxpayer makes an election under this paragraph with respect to any section 614(b) aggregation, then the adjusted basis (as of the first day of the first taxable year beginning December 31, 1963) of each property included in such aggregation shall be the adjusted basis of such property at the time it was first included in the aggregation by the taxpayer, adjusted for that portion of those adjustments to the basis of the aggregation which are reasonably attributable to such property. If, under the preceding sentence, the total of the adjusted bases of the interests included in the aggregation exceeds the adjusted basis of the aggregation (as of the day preceding the first day of the first taxable year which begins after December 31, 1963), the adjusted bases of the properties which include such interests shall be adjusted, under regulations prescribed by the Secretary of the Treasury or his delegate, so that the total of the adjusted bases of such interests equals the adjusted basis of the aggregation. An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) SECTION 614(b) AGGREGATION.—The term 'section 614(b) aggregation' means any aggregation to which section 614(b)(1)(A) of the Internal Revenue Code of 1986 (as in effect before the amendments made by subsection (a) of this section) applied for the day preceding the first day of the first taxable year beginning after December 31, 1963.

''(B) PROPERTY.—The term 'property' has the same meaning as is applicable, under section 614 of the Internal Revenue Code of 1986, to the taxpayer for the first taxable year beginning after December 31, 1963.''

[§ 615. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(88), Oct. 4, 1976, 90 Stat. 1779]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 211; July 6, 1960, Pub. L. 86–594, § 1, 74 Stat. 333; Sept. 12, 1966, Pub. L. 89–570, § 2(a), 80 Stat. 763; Dec. 30, 1969, Pub. L. 91–172, title V, § 504(a), 83 Stat. 632, related to pre-1970 exploration expenditures.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

§ 616. Development expenditures

(a) In general

Except as provided in subsections (b) and (d), there shall be allowed as a deduction in computing taxable income all expenditures paid or incurred during the taxable year for the development of a mine or other natural deposit (other than an oil or gas well) if paid or incurred after the existence of ores or minerals in commercially marketable quantities has been disclosed. This section shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in section 167, but allowances for depreciation shall be considered, for purposes of this section, as expenditures.

(b) Election of taxpayer

At the election of the taxpayer, made in accordance with regulations prescribed by the Secretary, expenditures described in subsection (a) paid or incurred during the taxable year shall be treated as deferred expenses and shall be deductible on a ratable basis as the units of produced ores or minerals benefited by such expenditures are sold. In the case of such expenditures paid or

incurred during the development stage of the mine or deposit, the election shall apply only with respect to the excess of such expenditures during the taxable year over the net receipts during the taxable year from the ores or minerals produced from such mine or deposit. The election under this subsection, if made, must be for the total amount of such expenditures, or the total amount of such excess, as the case may be, with respect to the mine or deposit, and shall be binding for such taxable year.

(c) Adjusted basis of mine or deposit

The amount of expenditures which are treated under subsection (b) as deferred expenses shall be taken into account in computing the adjusted basis of the mine or deposit, except that such amount, and the adjustments to basis provided in section 1016(a)(9), shall be disregarded in determining the adjusted basis of the property for the purpose of computing a deduction for depletion under section 611.

(d) Special rules for foreign development

In the case of any expenditures paid or incurred with respect to the development of a mine or other natural deposit (other than an oil, gas, or geothermal well) located outside of the United States—

(1) subsections (a) and (b) shall not apply, and

(2) such expenditures shall—

(A) at the election of the taxpayer, be included in adjusted basis for purposes of computing the amount of any deduction allowable under section 611 (without regard to section 613), or

(B) if subparagraph (A) does not apply, be allowed as a deduction ratably over the 10-taxable year period beginning with the taxable year in which such expenditures were paid or incurred.

(e) Cross reference

For election of 10-year amortization of expenditures allowable as a deduction under subsection (a), see section 59(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 212; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title II, §201(d)(9)(C), formerly §201(c)(9)(C), Sept. 3, 1982, 96 Stat. 420, renumbered §201(d)(9)(C), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 99–514, title IV, §411(b)(2)(A), (C)(i), Oct. 22, 1986, 100 Stat. 2226; Pub. L. 100–647, title I, §1007(g)(7), Nov. 10, 1988, 102 Stat. 3435.)

AMENDMENTS

1988—Subsec. (e). Pub. L. 100–647 substituted ''section 59(e)'' for ''section 58(i)''.

1986—Subsec. (a). Pub. L. 99–514, §411(b)(2)(C)(i), inserted reference to subsec. (d).

Subsecs. (d), (e). Pub. L. 99–514, §411(b)(2)(A), added subsec. (d) and redesignated former subsec. (d) as (e).

1982—Subsec. (d). Pub. L. 97–248 added subsec. (d).

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, with transition rule, see section 411(c) of Pub. L. 99–514 set out as a note under section 263 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

§ 617. Deduction and recapture of certain mining exploration expenditures

(a) Allowance of deduction

(1) General rule

At the election of the taxpayer, expenditures paid or incurred during the taxable year for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral, and paid or incurred before the beginning of the development stage of the mine, shall be allowed as a deduction in computing taxable income. This subsection shall apply only with respect to the amount of such expenditures which, but for this subsection, would not be allowable as a deduction for the taxable year. This subsection shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in section 167, but allowances for depreciation shall be considered, for purposes of this subsection, as expenditures paid or incurred. In no case shall this subsection apply with respect to amounts paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of oil or gas or of any mineral with respect to which a deduction for percentage depletion is not allowable under section 613.

(2) Elections

(A) Method

Any election under this subsection shall be made in such manner as the Secretary may by regulations prescribe.

(B) Time and scope

The election provided by paragraph (1) for the taxable year may be made at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for the taxable year. Such an election for the taxable year shall apply to all expenditures described in paragraph (1) paid or incurred by the taxpayer during the taxable year or during any subsequent taxable year. Such an election may not be revoked unless the Secretary consents to such revocation.

(C) Deficiencies

The statutory period for the assessment of any deficiency for any taxable year, to the extent such deficiency is attributable to an election or revocation of an election under this subsection, shall not expire before the last day of the 2-year period beginning on the day after the date on which such elec-

tion or revocation of election is made; and such deficiency may be assessed at any time before the expiration of such 2-year period, notwithstanding any law or rule of law which would otherwise prevent such assessment.

(b) Recapture on reaching producing stage

(1) Recapture

If, in any taxable year, any mine with respect to which expenditures were deducted pursuant to subsection (a) reaches the producing stage, then—

(A) If the taxpayer so elects with respect to all such mines reaching the producing stage during the taxable year, he shall include in gross income for the taxable year an amount equal to the adjusted exploration expenditures with respect to such mines, and the amount so included in income shall be treated for purposes of this subtitle as expenditures which (i) are paid or incurred on the respective dates on which the mines reach the producing stage, and (ii) are properly chargeable to capital account.

(B) If subparagraph (A) does not apply with respect to any such mine, then the deduction for depletion under section 611 with respect to the property shall be disallowed until the amount of depletion which would be allowable but for this subparagraph equals the amount of the adjusted exploration expenditures with respect to such mine.

(2) Elections

(A) Method

Any election under this subsection shall be made in such manner as the Secretary may by regulations prescribe.

(B) Time and scope

The election provided by paragraph (1) for any taxable year may be made or changed not later than the time prescribed by law for filing the return (including extensions thereof) for such taxable year.

(c) Recapture in case of bonus or royalty

If an election has been made under subsection (a) with respect to expenditures relating to a mining property and the taxpayer receives or accrues a bonus or a royalty with respect to such property, then the deduction for depletion under section 611 with respect to the bonus or royalty shall be disallowed until the amount of depletion which would be allowable but for this subsection equals the amount of the adjusted exploration expenditures with respect to the property to which the bonus or royalty relates.

(d) Gain from dispositions of certain mining property

(1) General rule

Except as otherwise provided in this subsection, if mining property is disposed of the lower of—

(A) the adjusted exploration expenditures with respect to such property, or

(B) the excess of—

(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value (in the case of any other disposition), over

(ii) the adjusted basis of such property,

shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Disposition of portion of property

For purposes of paragraph (1)—

(A) In the case of the disposition of a portion of a mining property (other than an undivided interest), the entire amount of the adjusted exploration expenditures with respect to such property shall be treated as attributable to such portion to the extent of the amount of the gain to which paragraph (1) applies.

(B) In the case of the disposition of an undivided interest in a mining property (or a portion thereof), a proportionate part of the adjusted exploration expenditures with respect to such property shall be treated as attributable to such undivided interest to the extent of the amount of the gain to which paragraph (1) applies.

This paragraph shall not apply to any expenditure to the extent the taxpayer establishes to the satisfaction of the Secretary that such expenditure relates neither to the portion (or interest therein) disposed of nor to any mine, in the property held by the taxpayer before the disposition, which has reached the producing stage.

(3) Exceptions and limitations

Paragraphs (1), (2), and (3) of section 1245(b) (relating to exceptions and limitations with respect to gain from disposition of certain depreciable property) shall apply in respect of this subsection in the same manner and with the same effect as if references in section 1245(b) to section 1245 or any provision thereof were references to this subsection or the corresponding provisions of this subsection and as if references to section 1245 property were references to mining property.

(4) Application of subsection

This subsection shall apply notwithstanding any other provision of this subtitle.

(5) Coordination with section 1254

This subsection shall not apply to any disposition to which section 1254 applies.

(e) Basis of property

(1) Basis

The basis of any property shall not be reduced by the amount of any depletion which would be allowable but for the application of this section.

(2) Adjustments

The Secretary shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (d)(1).

(f) Definitions

For purposes of this section

(1) Adjusted exploration expenditures

The term ''adjusted exploration expenditures'' means, with respect to any property or mine—

(A) the amount of the expenditures allowed for the taxable year and all preceding taxable years as deductions under subsection (a) to the taxpayer or any other person which are properly chargeable to such property or mine and which (but for the election under subsection (a)) would be reflected in the adjusted basis of such property or mine, reduced by

(B) for the taxable year and for each preceding taxable year, the amount (if any) by which (i) the amount which would have been allowable for percentage depletion under section 613 but for the deduction of such expenditures, exceeds (ii) the amount allowable for depletion under section 611,

properly adjusted for any amounts included in gross income under subsection (b) or (c) and for any amounts of gain to which subsection (d) applied.

(2) Mining property

The term ''mining property'' means any property (within the meaning of section 614 after the application of subsections (c) and (e) thereof) with respect to which any expenditures allowed as a deduction under subsection (a)(1) are properly chargeable.

(3) Disposal of coal or domestic iron ore with a retained economic interest

A transaction which constitutes a disposal of coal or iron ore under section 631(c) shall be treated as a disposition. In such a case, the excess referred to in subsection (d)(1)(B) shall be treated as equal to the gain (if any) referred to in section 631(c).

(g) Special rules relating to partnership property

(1) Property distributed to partner

In the case of any property or mine received by the taxpayer in a distribution with respect to part or all of his interest in a partnership, the adjusted exploration expenditures with respect to such property or mine include the adjusted exploration expenditures (not otherwise included under subsection (f)(1)) with respect to such property or mine immediately prior to such distribution, but the adjusted exploration expenditures with respect to any such property or mine shall be reduced by the amount of gain to which section 751(b) applied realized by the partnership (as constituted after the distribution) on the distribution of such property or mine.

(2) Property retained by partnership

In the case of any property or mine held by a partnership after a distribution to a partner to which section 751(b) applied, the adjusted exploration expenditures with respect to such property or mine shall, under regulations prescribed by the Secretary, be reduced by the amount of gain to which section 751(b) applied realized by such partner with respect to such distribution on account of such property or mine.

(h) Special rules for foreign exploration

In the case of any expenditures paid or incurred before the development stage for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (other than an oil, gas, or geothermal well) located outside the United States—

(1) subsection (a) shall not apply, and

(2) such expenditures shall—

(A) at the election of the taxpayer, be included in adjusted basis for purposes of computing the amount of any deduction allowable under section 611 (without regard to section 613), or

(B) if subparagraph (A) does not apply, be allowed as a deduction ratably over the 10-taxable year period beginning with the taxable year in which such expenditures were paid or incurred.

(i) Cross reference

For election of 10-year amortization of expenditures allowable as a deduction under this section, see section 59(e).

(Added Pub. L. 89–570, §1(a), Sept. 12, 1966, 80 Stat. 759; amended Pub. L. 91–172, title V, §504(b), Dec. 30, 1969, 83 Stat. 632; Pub. L. 94–455, title XIX, §§1901(a)(89), (b)(3)(K), (21)(C)–(E), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1779, 1793, 1797, 1834; Pub. L. 97–248, title II, §201(d)(9)(D), formerly §201(c)(9)(D), §224(c)(8), Sept. 3, 1982, 96 Stat. 420, 489, renumbered §201(d)(9)(D), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 99–514, title IV, §§411(b)(2)(B), 413(b), Oct. 22, 1986, 100 Stat. 2226, 2228; Pub. L. 100–647, title I, §1007(g)(7), Nov. 10, 1988, 102 Stat. 3435; Pub. L. 101–508, title XI, §11801(a)(27), (c)(13), Nov. 5, 1990, 104 Stat. 1388–521, 1388–527.)

AMENDMENTS

1990—Subsecs. (i), (j). Pub. L. 101–508 redesignated subsec. (j) as (i) and struck out former subsec. (i) which related to deduction of certain pre-1970 exploration expenditures.

1988—Subsec. (j). Pub. L. 100–647 substituted ''section 59(e)'' for ''section 58(i)''.

1986—Subsec. (d)(5). Pub. L. 99–514, §413(b), added par. (5).

Subsec. (h). Pub. L. 99–514, §411(b)(2)(B), amended subsec. (h) generally, substituting provisions relating to special rules for foreign exploration for provisions relating to limitations.

1982—Subsec. (h)(3)(B). Pub. L. 97–248, §224(c)(8), inserted ''338,'' after ''334(b),''.

Subsec. (j). Pub. L. 97–248, §201(d)(9)(D), formerly §201(c)(9)(D), added subsec. (j).

1976—Subsec. (a)(2)(A). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(2)(B). Pub. L. 94–455, §§1901(a)(89), 1906(b)(13)(A), substituted ''may not be revoked unless'' for ''may not be revoked after the last day of the third month following the month in which the final regulations issued under the authority of this subsection are published in the Federal Register, unless'', and struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(2)(A). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(1). Pub. L. 94–455, §1901(b)(3)(K), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231''.

Subsecs. (d)(2), (e)(2), (g)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (h)(1). Pub. L. 94–455, §1901(b)(21)(C), substituted ''and subsection (a) of section 615 (as in effect before the enactment of the Tax Reform Act of 1976)'' for ''and section 615(a) and the amounts which are or have been treated as deferred expenses under section 615(b)''.

Subsec. (h)(3). Pub. L. 94–455, § 1901(b)(21)(D), struck out ''and all amounts treated as deferred expenses which were paid or incurred'' after ''amounts deducted'' in introductory provisions, redesignated subpar. (C) as (B), and in subpar. (B) as so redesignated, substituted ''374(b)(1)'' for ''373(b)(1)''. Former subpar. (B), which related to the application of par. (2)(B) where the taxpayer would be entitled under section 381(c)(10) to deduct expenses deferred under section 615(b) had the distributor or transferor corporation elected to defer such expenses, was struck out.

Subsec. (i). Pub. L. 94–455, § 1901(b)(21)(E), added subsec. (i).

1969—Pub. L. 91–172, § 504(b)(1), substituted ''Deduction and recapture of certain mining exploration expenditures'' for ''Additional exploration expenditures in the case of domestic mining'' in heading.

Subsec. (a)(1). Pub. L. 91–172, § 504(b)(2), struck out reference to United States, the Outer Continental Shelf and the Outer Continental Shelf Lands Act from general rule dealing with allowance of deductions for expenditures in ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral.

Subsec. (h). Pub. L. 91–172, § 504(b)(3), substituted provisions imposing limitations on the operation of this section for provision making cross reference to subsecs. (f) and (g) of section 615.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 411(b)(2)(B) of Pub. L. 99–514 applicable to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, with transition rule, see section 411(c) of Pub. L. 99–514 set out as a note under section 263 of this title.

Amendment by section 413(b) of Pub. L. 99–514 applicable to any disposition of property placed in service by taxpayer after Dec. 31, 1986, but inapplicable if such property was acquired pursuant to written contract entered into before Sept. 26, 1985, and binding at all times thereafter, see section 413(c) of Pub. L. 99–514, set out as a note under section 1254 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 201(d)(9)(D) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

Amendment by section 224(c)(8) of Pub. L. 97–248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(89), (b)(3)(K), (21)(C)–(E) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, and for purposes of this section, elections under section 615(e) of this title, effective with respect to exploration expenditures paid or incurred before Jan. 1, 1970, to be treated as an election under subsec. (a) of this section with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d) of Pub. L. 91–172, set out as a note under section 243 of this title.

EFFECTIVE DATE

Section 3 of Pub. L. 89–570 provided that: ''The amendments made by this Act [enacting this section and amending sections 170, 301, 312, 341, 453, 615, 703, and 751 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Sept. 12, 1966] but only in respect of expenditures paid or incurred after such date.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[PART II—REPEALED]

[§ 621. Repealed. Pub. L. 101–508, title XI, § 11801(a)(28), Nov. 5, 1990, 104 Stat. 1388–521]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 212, related to payments to encourage exploration, development, and mining for defense purposes.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PART III—SALES AND EXCHANGES

Sec.
631. Gain or loss in the case of timber, coal, or domestic iron ore.
[632. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, § 1901(b)(22)(A), Oct. 4, 1976, 90 Stat. 1798, struck out item 632 ''Sale of oil or gas properties''.

1964—Pub. L. 88–272, title II, § 227(b)(2), Feb. 26, 1964, 78 Stat. 98, inserted reference to domestic iron ore in item 631.

§ 631. Gain or loss in the case of timber, coal, or domestic iron ore

(a) Election to consider cutting as sale or exchange

If the taxpayer so elects on his return for a taxable year, the cutting of timber (for sale or for use in the taxpayer's trade or business) during such year by the taxpayer who owns, or has a contract right to cut, such timber (providing he has owned such timber or has held such contract right for a period of more than 1 year) shall be considered as a sale or exchange of such timber cut during such year. If such election has been made, gain or loss to the taxpayer shall be recognized in an amount equal to the difference between the fair market value of such timber, and the adjusted basis for depletion of such timber in the hands of the taxpayer. Such fair market value shall be the fair market value as of