

§ 57. Items of tax preference**(a) General rule**

For purposes of this part, the items of tax preference determined under this section are—

(1) Depletion

With respect to each property (as defined in section 614), the excess of the deduction for depletion allowable under section 611 for the taxable year over the adjusted basis of the property at the end of the taxable year (determined without regard to the depletion deduction for the taxable year). This paragraph shall not apply to any deduction for depletion computed in accordance with section 613A(c).

(2) Intangible drilling costs**(A) In general**

With respect to all oil, gas, and geothermal properties of the taxpayer, the amount (if any) by which the amount of the excess intangible drilling costs arising in the taxable year is greater than 65 percent of the net income of the taxpayer from oil, gas, and geothermal properties for the taxable year.

(B) Excess intangible drilling costs

For purposes of subparagraph (A), the amount of the excess intangible drilling costs arising in the taxable year is the excess of—

(i) the intangible drilling and development costs paid or incurred in connection with oil, gas, and geothermal wells (other than costs incurred in drilling a non-productive well) allowable under section 263(c) or 291(b) for the taxable year, over

(ii) the amount which would have been allowable for the taxable year if such costs had been capitalized and straight line recovery of intangibles (as defined in subsection (b)) had been used with respect to such costs.

(C) Net income from oil, gas, and geothermal properties

For purposes of subparagraph (A), the amount of the net income of the taxpayer from oil, gas, and geothermal properties for the taxable year is the excess of—

(i) the aggregate amount of gross income (within the meaning of section 613(a)) from all oil, gas, and geothermal properties of the taxpayer received or accrued by the taxpayer during the taxable year, over

(ii) the amount of any deductions allocable to such properties reduced by the excess described in subparagraph (B) for such taxable year.

(D) Paragraph applied separately with respect to geothermal properties and oil and gas properties

This paragraph shall be applied separately with respect to—

(i) all oil and gas properties which are not described in clause (ii), and

(ii) all properties which are geothermal deposits (as defined in section 613(e)(2)).

(E) Exception for independent producers

In the case of any oil or gas well—

(i) In general

This paragraph shall not apply to any taxpayer which is not an integrated oil company (as defined in section 291(b)(4)).

(ii) Limitation on benefit

The reduction in alternative minimum taxable income by reason of clause (i) for any taxable year shall not exceed 40 percent of the alternative minimum taxable income for such year determined without regard to clause (i) and the alternative tax net operating loss deduction under section 56(a)(4).

[(3) Repealed. Pub. L. 100-647, title I, § 1007(b)(14)(B), Nov. 10, 1988, 102 Stat. 3430]

[(4) Repealed. Pub. L. 104-188, title I, § 1616(b)(3), Aug. 20, 1996, 110 Stat. 1856]

(5) Tax-exempt interest**(A) In general**

Interest on specified private activity bonds reduced by any deduction (not allowable in computing the regular tax) which would have been allowable if such interest were includible in gross income.

(B) Treatment of exempt-interest dividends

Under regulations prescribed by the Secretary, any exempt-interest dividend (as defined in section 852(b)(5)(A)) shall be treated as interest on a specified private activity bond to the extent of its proportionate share of the interest on such bonds received by the company paying such dividend.

(C) Specified private activity bonds**(i) In general**

For purposes of this part, the term “specified private activity bond” means any private activity bond (as defined in section 141) which is issued after August 7, 1986, and the interest on which is not includible in gross income under section 103.

(ii) Exception for qualified 501(c)(3) bonds

For purposes of clause (i), the term “private activity bond” shall not include any qualified 501(c)(3) bond (as defined in section 145).

(iii) Exception for certain housing bonds

For purposes of clause (i), the term “private activity bond” shall not include any bond issued after the date of the enactment of this clause if such bond is—

(I) an exempt facility bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide qualified residential rental projects (as defined in section 142(d)),

(II) a qualified mortgage bond (as defined in section 143(a)), or

(III) a qualified veterans’ mortgage bond (as defined in section 143(b)).

The preceding sentence shall not apply to any refunding bond unless such preceding sentence applied to the refunded bond (or in the case of a series of refundings, the original bond).

(iv) Exception for refundings

For purposes of clause (i), the term “private activity bond” shall not include any refunding bond (whether a current or advance refunding) if the refunded bond (or in the case of a series of refundings, the original bond) was issued before August 8, 1986.

(v) Certain bonds issued before September 1, 1986

For purposes of this subparagraph, a bond issued before September 1, 1986, shall be treated as issued before August 8, 1986, unless such bond would be a private activity bond if—

(I) paragraphs (1) and (2) of section 141(b) were applied by substituting “25 percent” for “10 percent” each place it appears,

(II) paragraphs (3), (4), and (5) of section 141(b) did not apply, and

(III) subparagraph (B) of section 141(c)(1) did not apply.

(vi) Exception for bonds issued in 2009 and 2010**(I) In general**

For purposes of clause (i), the term “private activity bond” shall not include any bond issued after December 31, 2008, and before January 1, 2011.

(II) Treatment of refunding bonds

For purposes of subclause (I), a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

(III) Exception for certain refunding bonds

Subclause (II) shall not apply to any refunding bond which is issued to refund any bond which was issued after December 31, 2003, and before January 1, 2009.

(6) Accelerated depreciation or amortization on certain property placed in service before January 1, 1987

The amounts which would be treated as items of tax preference with respect to the taxpayer under paragraphs (2), (3), (4), and (12) of this subsection (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986). The preceding sentence shall not apply to any property to which section 56(a)(1) or (5) applies.

(7) Exclusion for gains on sale of certain small business stock

An amount equal to 7 percent of the amount excluded from gross income for the taxable year under section 1202.

(b) Straight line recovery of intangibles defined

For purposes of paragraph (2) of subsection (a)—

(1) In general

The term “straight line recovery of intangibles”, when used with respect to intangible

drilling and development costs for any well, means (except in the case of an election under paragraph (2)) ratable amortization of such costs over the 120-month period beginning with the month in which production from such well begins.

(2) Election

If the taxpayer elects with respect to the intangible drilling and development costs for any well, the term “straight line recovery of intangibles” means any method which would be permitted for purposes of determining cost depletion with respect to such well and which is selected by the taxpayer for purposes of subsection (a)(2).

(Added Pub. L. 99-514, title VII, §701(a), Oct. 22, 1986, 100 Stat. 2333; amended Pub. L. 100-647, title I, §1007(b)(14)(B), (c), Nov. 10, 1988, 102 Stat. 3430, 3432; Pub. L. 101-508, title XI, §§11344, 11801(c)(12)(A), 11815(b)(3), Nov. 5, 1990, 104 Stat. 1388-472, 1388-527, 1388-558; Pub. L. 102-227, title I, §112, Dec. 11, 1991, 105 Stat. 1689; Pub. L. 102-486, title XIX, §1915(a)(1), (b)(1), Oct. 24, 1992, 106 Stat. 3023, 3024; Pub. L. 103-66, title XIII, §§13113(b)(1), 13171(a), Aug. 10, 1993, 107 Stat. 429, 454; Pub. L. 104-188, title I, §1616(b)(3), Aug. 20, 1996, 110 Stat. 1856; Pub. L. 105-34, title III, §311(b)(2)(B), Aug. 5, 1997, 111 Stat. 835; Pub. L. 105-206, title VI, §6005(d)(3), July 22, 1998, 112 Stat. 805; Pub. L. 108-27, title III, §301(b)(3), May 28, 2003, 117 Stat. 759; Pub. L. 110-289, div. C, title I, §3022(a)(1), July 30, 2008, 122 Stat. 2893; Pub. L. 111-5, div. B, title I, §1503(a), Feb. 17, 2009, 123 Stat. 354; Pub. L. 113-295, div. A, title II, §221(a)(10), (11), Dec. 19, 2014, 128 Stat. 4038.)

REFERENCES IN TEXT

The date of the enactment of this clause, referred to in subsec. (a)(5)(C)(iii), is the date of enactment of Pub. L. 110-289, which was approved July 30, 2008.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (a)(6), is the date of enactment of Pub. L. 99-514, which was approved Oct. 22, 1986.

PRIOR PROVISIONS

A prior section 57, added Pub. L. 91-172, title III, §301(a), Dec. 30, 1969, 83 Stat. 581; amended Pub. L. 92-178, title III, §§303(b), 304(a)(1), (b)(1), (d), Dec. 10, 1971, 85 Stat. 522-524; Pub. L. 94-455, title III, §301(c)(1)-(4)(A), (C), title XIX, §§1901(b)(33)(A), (B), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1550-1552, 1800, 1834; Pub. L. 95-30, title I, §101(d)(5), title III, §308(a), title IV, §402(a)(5), May 23, 1977, 91 Stat. 133, 153, 155; Pub. L. 95-600, title III, §301(b)(2), title IV, §§402(b)(1), 421(b), title VII, §701(b)(1), (3), (4), (f)(3)(D), Nov. 6, 1978, 92 Stat. 2820, 2868, 2874, 2898, 2899, 2901; Pub. L. 95-618, title IV, §402(b), Nov. 9, 1978, 92 Stat. 3202; Pub. L. 96-222, title I, §§104(a)(4)(E), (F), 107(a)(1)(A), Apr. 1, 1980, 94 Stat. 217, 222; Pub. L. 96-596, §3(a), Dec. 24, 1980, 94 Stat. 3475; Pub. L. 97-34, title I, §121(c)(1), title II, §§205, 212(d)(2)(B), Aug. 13, 1981, 95 Stat. 197, 223, 239; Pub. L. 97-248, title II, §§201(b), 204(b), Sept. 3, 1982, 96 Stat. 416, 426; Pub. L. 97-354, §5(a)(14), (15), Oct. 19, 1982, 96 Stat. 1693; Pub. L. 97-448, title I, §102(b)(1)(A), (3), (4), Jan. 12, 1983, 96 Stat. 2369, 2370; Pub. L. 98-369, div. A, title I, §§16(b), 68(c), 111(e)(5)-(7), title V, §555(a)(2), title VII, §§711(a)(3)(A), 722(a)(1), July 18, 1984, 98 Stat. 505, 588, 633, 897, 942, 972; Pub. L. 99-121, title I, §103(b)(1)(B), (7), Oct. 11, 1985, 99 Stat. 509, 510; Pub. L. 99-272, title XIII, §13208(a), Apr. 7, 1986, 100 Stat. 321; Pub. L. 99-514, title XVIII, §§1804(k)(3)(B)-(D), 1809(a)(3), Oct. 22, 1986, 100 Stat. 2809, 2819, related to items of tax preference, prior to the general revision of this part by Pub. L. 99-514, §701(a).

AMENDMENTS

2014—Subsec. (a)(1). Pub. L. 113-295, § 221(a)(10), substituted “This paragraph” for “Effective with respect to taxable years beginning after December 31, 1992, this paragraph”.

Subsec. (a)(2)(E)(i). Pub. L. 113-295, § 221(a)(11)(A), substituted “This paragraph” for “In the case of any taxable year beginning after December 31, 1992, this paragraph”.

Subsec. (a)(2)(E)(ii). Pub. L. 113-295, § 221(a)(11)(B), struck out “(30 percent in case of taxable years beginning in 1993)” after “40 percent”.

2009—Subsec. (a)(5)(C)(vi). Pub. L. 111-5 added cl. (vi).
2008—Subsec. (a)(5)(C)(iii) to (v). Pub. L. 110-289 added cl. (iii) and redesignated former cls. (iii) and (iv) as (iv) and (v), respectively.

2003—Subsec. (a)(7). Pub. L. 108-27 substituted “7 percent” for “42 percent” after “An amount equal to” and struck out last sentence which read as follows: “In the case of stock the holding period of which begins after December 31, 2000 (determined with the application of the last sentence of section 1(h)(2)(B)), the preceding sentence shall be applied by substituting ‘28 percent’ for ‘42 percent’.”

1998—Subsec. (a)(7). Pub. L. 105-206 inserted at end “In the case of stock the holding period of which begins after December 31, 2000 (determined with the application of the last sentence of section 1(h)(2)(B)), the preceding sentence shall be applied by substituting ‘28 percent’ for ‘42 percent’.”

1997—Subsec. (a)(7). Pub. L. 105-34 substituted “42 percent” for “one-half”.

1996—Subsec. (a)(4). Pub. L. 104-188 struck out par. (4) which read as follows: “RESERVES FOR LOSSES ON BAD DEBTS OF FINANCIAL INSTITUTIONS.—In the case of a financial institution to which section 593 applies, the amount by which the deduction allowable for the taxable year for a reasonable addition to a reserve for bad debts exceeds the amount that would have been allowable had the institution maintained its bad debt reserve for all taxable years on the basis of actual experience.”

1993—Subsec. (a)(6), (7). Pub. L. 103-66, § 13171(a), redesignated pars. (7) and (8) as (6) and (7), respectively, and struck out heading and text of former par. (6). Text read as follows:

“(A) IN GENERAL.—The amount by which the deduction allowable under section 170 or 642(c) would be reduced if all capital gain property were taken into account at its adjusted basis.

“(B) CAPITAL GAIN PROPERTY.—For purposes of subparagraph (A), the term ‘capital gain property’ has the meaning given to such term by section 170(b)(1)(C)(iv). Such term shall not include any property to which an election under section 170(b)(1)(C)(iii) applies. In the case of any taxable year beginning in 1991, such term shall not include any tangible personal property. In the case of a contribution made before July 1, 1992, in a taxable year beginning in 1992, such term shall not include any tangible personal property.”

Subsec. (a)(8). Pub. L. 103-66, § 13171(a), redesignated par. (8) as (7).

Pub. L. 103-66, § 13113(b)(1), added par. (8).

1992—Subsec. (a)(1). Pub. L. 102-486, § 1915(a)(1), inserted at end “Effective with respect to taxable years beginning after December 31, 1992, this paragraph shall not apply to any deduction for depletion computed in accordance with section 613A(c).”

Subsec. (a)(2)(E). Pub. L. 102-486, § 1915(b)(1), added subpar. (E).

1991—Subsec. (a)(6)(B). Pub. L. 102-227 inserted at end “In the case of a contribution made before July 1, 1992, in a taxable year beginning in 1992, such term shall not include any tangible personal property.”

1990—Subsec. (a)(2)(D)(ii). Pub. L. 101-508, § 11815(b)(3), substituted “section 613(e)(2)” for “section 613(e)(3)”.

Subsec. (a)(4). Pub. L. 101-508, § 11801(c)(12)(A), struck out “585 or” after “section”.

Subsec. (a)(6)(B). Pub. L. 101-508, § 11344, inserted at end “In the case of any taxable year beginning in 1991,

such term shall not include any tangible personal property.”

1988—Subsec. (a)(3). Pub. L. 100-647, § 1007(b)(14)(B), struck out par. (3) which related to incentive stock options.

Subsec. (a)(5)(C)(i). Pub. L. 100-647, § 1007(c)(2), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “For purposes of this part, the term ‘specified private activity bonds’ means any private activity bond (as defined in section 141) issued after August 7, 1986.”

Subsec. (a)(5)(C)(iii). Pub. L. 100-647, § 1007(c)(1), inserted “(whether a current or advance refunding)” after “any refunding bond”.

Subsec. (a)(6)(A). Pub. L. 100-647, § 1007(c)(3), inserted “or 642(c)” after “section 170”.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-5 applicable to obligations issued after Dec. 31, 2008, see section 1503(c) of Pub. L. 111-5, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-289 applicable to bonds issued after July 30, 2008, see section 3022(d)(1) of Pub. L. 110-289, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-27 applicable to dispositions on or after May 6, 2003, see section 301(d)(3) of Pub. L. 108-27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to taxable years ending after May 6, 1997, see section 311(d) of Pub. L. 105-34, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104-188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13113(b)(1) of Pub. L. 103-66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103-66, set out as a note under section 53 of this title.

Amendment by section 13171(a) of Pub. L. 103-66 applicable to contributions made after June 30, 1992, except that in case of any contribution of capital gain property which is not tangible personal property, such amendment applicable only if the contribution is made after Dec. 31, 1992, see section 13171(d) of Pub. L. 103-66, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-486 applicable to taxable years beginning after Dec. 31, 1992, see section 1915(d) of Pub. L. 102-486, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1007(b)(14)(B) of Pub. L. 100-647 applicable with respect to options exercised

after Dec. 31, 1987, see section 1007(b)(14)(C) of Pub. L. 100-647, set out as a note under section 56 of this title.

Amendment by section 1007(c) of 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

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, but subsec. (a)(6) not to apply to any deduction attributable to contributions made before Aug. 16, 1986, see section 701(f) of Pub. L. 99-514, set out as a note under section 55 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by sections 11801 and 11815 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.

TRANSITIONAL PROVISIONS

Pub. L. 100-647, title I, §1007(f)(4), Nov. 10, 1988, 102 Stat. 3433, provided that:

“(A) If any property to which this paragraph applies is placed in service in a taxable year which begins before January 1, 1987, and ends on or after August 1, 1986, the item of tax preference determined under section 57(a) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986]) with respect to such property shall be the excess of—

“(i) the amount allowable as a deduction for depreciation or amortization for such taxable year, over

“(ii) the amount which would be determined for such taxable year under the rules of paragraph (1) or (5) (whichever is appropriate) of section 56(a) of the Internal Revenue Code of 1954 (as amended by the Tax Reform Act of 1986 [Pub. L. 99-514]).

“(B) This paragraph shall apply to any property—

“(i) which is described in paragraph (4) or (12) of section 57(a) of the Internal Revenue Code of 1954 (as so in effect), and

“(ii) to which paragraph (1) or (5) of section 56(a) of the Internal Revenue Code of 1986 would apply if the taxable year referred to in subparagraph (A) began after December 31, 1986.”

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(a) of Pub. L. 99-514 [enacting this section] notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

§ 58. Denial of certain losses

(a) Denial of farm loss

(1) In general

For purposes of computing the amount of the alternative minimum taxable income for any taxable year of a taxpayer other than a corporation—

(A) Disallowance of farm loss

No loss of the taxpayer for such taxable year from any tax shelter farm activity shall be allowed.

(B) Deduction in succeeding taxable year

Any loss from a tax shelter farm activity disallowed under subparagraph (A) shall be treated as a deduction allocable to such activity in the 1st succeeding taxable year.

(2) Tax shelter farm activity

For purposes of this subsection, the term “tax shelter farm activity” means—

(A) any farming syndicate as defined in section 461(j), and

(B) any other activity consisting of farming which is a passive activity (within the meaning of section 469(c)).

(3) Application to personal service corporations

For purposes of paragraph (1), a personal service corporation (within the meaning of section 469(j)(2)) shall be treated as a taxpayer other than a corporation.

(4) Determination of loss

In determining the amount of the loss from any tax shelter farm activity, the adjustments of sections 56 and 57 shall apply.

(b) Disallowance of passive activity loss

In computing the alternative minimum taxable income of the taxpayer for any taxable year, section 469 shall apply, except that in applying section 469—

(1) the adjustments of sections 56 and 57 shall apply, and

(2) in lieu of applying section 469(j)(7), the passive activity loss of a taxpayer shall be computed without regard to qualified housing interest (as defined in section 56(e)).

(c) Special rules

For purposes of this section—

(1) Special rule for insolvent taxpayers

(A) In general

The amount of losses to which subsection (a) or (b) applies shall be reduced by the amount (if any) by which the taxpayer is insolvent as of the close of the taxable year.

(B) Insolvent

For purposes of this paragraph, the term “insolvent” means the excess of liabilities over the fair market value of assets.

(2) Loss allowed for year of disposition of farm shelter activity

If the taxpayer disposes of his entire interest in any tax shelter farm activity during any taxable year, the amount of the loss attributable to such activity (determined after carryovers under subsection (a)(1)(B)) shall (to the extent otherwise allowable) be allowed for such taxable year in computing alternative minimum taxable income and not treated as a loss from a tax shelter farm activity.

(Added Pub. L. 99-514, title VII, §701(a), Oct. 22, 1986, 100 Stat. 2335; amended Pub. L. 100-203, title X, §10212(b), Dec. 22, 1987, 101 Stat. 1330-406; Pub. L. 100-647, title I, §1007(d), Nov. 10, 1988, 102 Stat. 3432; Pub. L. 113-295, div. A, title II, §221(a)(58)(E), (60)(B), Dec. 19, 2014, 128 Stat. 4047, 4048.)

PRIOR PROVISIONS

A prior section 58, added Pub. L. 91-172, title III, §301(a), Dec. 30, 1969, 83 Stat. 583; amended Pub. L.