

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

Pub. L. 85-866, title I, § 36(b), Sept. 2, 1958, 72 Stat. 1633, 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 geopressed brine

The allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to any qualified natural gas from geopressed 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 geopressed
brine**

The term “qualified natural gas from geopressed 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 geopressed 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 tax-

payer 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' 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 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 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),

¹ So in original. Probably should be "taxpayer's".

(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

Pub. L. 105-34, title IX, §972(b), Aug. 5, 1997, 111 Stat. 898, 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

Pub. L. 101-508, title XI, §11521(c), Nov. 5, 1990, 104 Stat. 1388-486, 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.

Pub. L. 101-508, title XI, §11523(c), Nov. 5, 1990, 104 Stat. 1388-487, 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

Pub. L. 98-369, div. A, title I, §25(c)(2), July 18, 1984, 98 Stat. 507, 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

Pub. L. 96-603, §3(b), Dec. 28, 1980, 94 Stat. 3513, 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.

Pub. L. 94-455, title XXI, §2115(f), Oct. 4, 1976, 90 Stat. 1910, 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

Pub. L. 94-12, title V, §501(c), Mar. 29, 1975, 89 Stat. 53, 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

Pub. L. 95-618, title IV, § 403(d), Nov. 9, 1978, 92 Stat. 3204, 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 combi-

nation 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.

(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 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.

(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