

26 USC 617: Deduction and recapture of certain mining exploration expenditures

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From Title 26-INTERNAL REVENUE CODE

Subtitle A-Income Taxes

CHAPTER 1-NORMAL TAXES AND SURTAXES

Subchapter I-Natural Resources

PART I-DEDUCTIONS

§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 election 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 XI, §§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.)

EDITORIAL NOTES

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.

STATUTORY NOTES AND RELATED SUBSIDIARIES

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

Pub. L. 89–570, §3, Sept. 12, 1966, 80 Stat. 764, 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.