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Internal Revenue Code Section 57(a)(5)

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 nonproductive 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)).

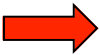
(E) Exception for independent producers. In the case of any oil or gas well-

(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.

(4) Repealed.



(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 [10/22/86] 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.

In the case of stock acquired on or before the date of the enactment of the Creating Small Business Jobs Act of 2010, 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) .