

to geothermal wells commenced on or after that date.

(Secs. 263, 9805, Internal Revenue Code of 1954 (92 Stat. 3201, 26 U.S.C. 362; 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7806, 47 FR 4061, Jan. 28, 1982]

§ 1.613-1 Percentage depletion; general rule.

(a) *In general.* In the case of a taxpayer computing the deduction for depletion under section 611 with respect to minerals on the basis of a percentage of gross income from the property, as defined in section 613(c) and §§ 1.613-3 and 1.613-4, the deduction shall be the percentage of the gross income as specified in section 613(b) and § 1.613-2. The deduction shall not exceed 50 percent (100 percent in the case of oil and gas properties for taxable years beginning after December 31, 1990) of the taxpayer's taxable income from the property (computed without regard to the allowance for depletion). The taxable income shall be computed in accordance with § 1.613-5. In no case shall the deduction for depletion computed under this section be less than the deduction computed upon the cost or other basis of the property provided in section 612 and the regulations thereunder. The apportionment of the deduction between the several owners of economic interests in a mineral deposit will be made as provided in paragraph (c) of § 1.611-1. For rules with respect to "gross income from the property" and for definition of the term "mining," see §§ 1.613-3 and 1.613-4. For definitions of the terms "property," "mineral deposit," and "minerals," see paragraph (d) of § 1.611-1.

(b) *Denial of percentage depletion in case of oil and gas wells.* Except as otherwise provided in section 613A and the regulations thereunder, in the case of oil or gas which is produced after December 31, 1974, and to which gross income is attributable after that date, the allowance for depletion shall be computed without regard to section 613.

[T.D. 8348, 56 FR 21938, May 13, 1991, as amended by T.D. 8437, 57 FR 43899, Sept. 23, 1992]

§ 1.613-2 Percentage depletion rates.

(a) *In general.* Subject to the provisions of paragraph (b) of this section and as provided in section 613(b), in the case of mines, wells, or other natural deposits, a taxpayer may deduct as an allowance for depletion under section 611 the percentages of gross income from the property as set forth in subparagraphs (1), (2), and (3) of this paragraph.

(1) *Without regard to situs of deposits.* The following rates are applicable to the minerals listed in this subparagraph regardless of the situs of the deposits from which the minerals are produced:

- (i) 27½ percent—Gas wells, oil wells.
- (ii) 23 percent—Sulfur, uranium.
- (iii) 15 percent—Ball clay, bentonite, china clay, metal mines,¹ sagger clay, rock asphalt, vermiculite.
- (iv) 10 percent—Asbestos,¹ brucite, coal, lignite, perlite, sodium chloride, wollastonite.
- (v) 5 percent—Brick and tile clay, gravel, mollusk shells (including clam shells and oyster shells), peat, pumice, sand, scoria, shale, stone (except dimension or ornamental stone). If from brine wells—Bromine, calcium chloride, magnesium chloride.

(2) *Production from United States deposits.* A rate of 23 percent is applicable to the minerals listed in this subparagraph if² produced from deposits within the United States:³

Anorthosite. ²	Ilmenite.
Asbestos.	Kyanite.
Bauxite.	Mica.
Beryl. ³	Olivine.
Celestite.	Quartz crystals
Chromite.	(radio grade).
Corundum.	Rutile.
Fluorspar.	Block Steatite talc.
Graphite.	Zircon.

Ores of the following metals—

¹Not applicable if the rate prescribed in subparagraph (2) of this paragraph is applicable.

²The rate prescribed in this subparagraph does not apply except to the extent that alumina and aluminum compounds are extracted therefrom.

³Applicable only for taxable years beginning before January 1, 1964.

⁴Applicable only for taxable years beginning after December 31, 1963.