

## § 1.617-2

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published in the FEDERAL REGISTER. After the expiration of this period, a taxpayer who has made an election under section 617(a) may not revoke that election unless he obtains the prior consent of the Commissioner of Internal Revenue. Consent will not be granted where a principal purpose for the revocation of the election is to circumvent the recapture provisions of section 517 (b), (c), or (d). The request for consent shall be made in writing to the Commissioner of Internal Revenue, Attention T:I:E, Washington, DC 20224. The request shall include in detail:

(a) The reason or reasons for the revocation of election under section 617(a);

(b) An itemization of the taxpayer's deductions under section 617(a);

(c) A description of all properties and detailed information of the exploration activities with respect to which the taxpayer has taken deductions under section 617(a);

(d) A description of any development or production activities on all properties with respect to which exploration expenditures were deducted under section 617(a); and

(e) A recomputation of the tax for each prior taxable year affected by the revocation. A letter setting forth the Commissioner's determination will be mailed to the taxpayer. If consent is granted, a copy of the letter granting such consent shall be filed with the director of the Internal Revenue service center with which the taxpayer's income tax return is required to be filed and shall be accompanied by an amended return or returns, if necessary.

(iii) If, before revoking his election, the taxpayer has transferred any mineral property with respect to which he deducted exploration expenditures under section 617(a), to another person in a transaction as a result of which the basis of such property in the hands of the transferee is determined in whole or in part by reference to the basis in the hands of the transferor, the statement submitted pursuant to subdivision (i) of this paragraph shall state that such property has been so transferred, shall identify the transferee, the property transferred, the date of the transfer, and shall indicate the amount of the adjusted exploration

expenditures with respect to such property on such date.

(4) *Deficiency attributable to election or revocation of election.* 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 section 617(a), shall not expire before the last day of the 2-year period which begins 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 which would otherwise prevent such assessment.

[T.D. 7192, 37 FR 12942, June 30, 1972]

### § 1.617-2 Limitation on amount deductible.

(a) *Expenditures paid or incurred before January 1, 1970.* In the case of expenditures paid or incurred before January 1, 1970, a taxpayer may deduct exploration expenditures paid or incurred during the taxable year with respect to any deposit of ore or other mineral for which a deduction for percentage depletion is allowable under section 613 (other than oil or gas) in the United States or on the Outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act, as amended and supplemented; 43 U.S.C. 1331).

(b) *Expenditures paid or incurred after December 31, 1969.* In the case of exploration expenditures paid or incurred after December 31, 1969, with respect to any deposit of ore or other mineral for which a deduction for percentage depletion is allowable under section 613 (other than oil or gas), a taxpayer may deduct:

(1) The amount of such expenditures paid or incurred during the taxable year with respect to any such deposit in the United States (as defined in section 638 and the regulations thereunder), and

(2) With respect to any such deposit located outside the United States (as defined in section 638 and the regulations thereunder) the lesser of:

(i) The amount of the exploration expenditures paid or incurred with respect to such deposits during the taxable year, or

(ii) \$400,000 minus the sum of the amount to be deducted under subparagraph (1) of this paragraph for the taxable year and all amounts deducted or treated as deferred expenses during all preceding taxable years under section 617 and section 615 of the Internal Revenue Code of 1954 and section 23(ff) of the Internal Revenue Code of 1939. See paragraph (d) of this section for application of the limitation in the case of a transferee of a mining property.

(c) *Examples.* The application of the provisions of paragraphs (a) and (b) of this section may be illustrated by the following examples:

*Example 1.* A, a calendar-year taxpayer who has claimed the benefits of section 615, expended \$100,000 for exploration expenditures during the year 1966. For each of the years 1967, 1968, 1969, and 1970 A had exploration costs of \$80,000 all with respect to coal deposits located within the United States. A deducted or deferred the maximum amounts allowable for each of the years 1966 (\$100,000), 1967 (\$80,000), 1968 (\$80,000), and 1969 (\$80,000). The \$80,000 of exploration expenditures for 1970 may be deducted under section 617 by A.

*Example 2.* B, a calendar-year taxpayer claimed deductions of \$100,000 per year under section 615 for the years 1968 and 1969. In 1970, B deducted \$150,000 under section 617 for exploration conducted with respect to coal deposits in the United States. In 1971, B paid \$150,000 with respect to exploration of tin deposits outside the United States. The maximum amount B may deduct with respect to the foreign exploration in 1971 is \$50,000 computed as follows:

(a) Add all amounts deducted or deferred for exploration expenditures by B for all years:

Year	Expenditures	Deducted or deferred
1968 .....	\$100,000	\$100,000
1969 .....	100,000	100,000
1970 .....	150,000	150,000
Total .....		350,000

(b) Subtract from \$400,000 (the maximum amount allowable to B for deduction of foreign exploration expenditures) the sum of the amounts obtained in (a) \$350,000:

Maximum amount allowable to taxpayer .....	\$400,000
Sum of amounts obtained in (a) .....	350,000
	50,000

*Example 3.* Assume the same facts as in example 2 except that in 1971 in addition to the \$150,000 paid with respect to exploration outside the United States, B paid \$100,000 with respect to exploration within the United States. As the following computation indicates, B may not deduct any amount with respect to the foreign exploration:

(a) Add all amounts deducted or deferred for exploration expenditures in prior years and the exploration expenditures with respect to exploration in the United States to be deducted in 1971:

Year	Expenditures	Deducted or deferred
1968 .....	\$100,000	\$100,000
1969 .....	100,000	100,000
1970 .....	150,000	150,000
1971 .....	250,000	<sup>1</sup> 100,000
Total .....		450,000

<sup>1</sup> Domestic.

(b) Because the sum of the amounts obtained in (a), \$450,000, exceeds \$400,000 no deduction would be allowable to B with respect to foreign exploration expenditures for 1971.

(d) *Transferee of mineral property.* (1) Where an individual or corporation transfers any mining property to the taxpayer, the taxpayer shall take into account for purposes of the \$400,000 limitation described in paragraph (b)(ii) of this section all amounts deducted and amounts treated as deferred expenses by the transferor if:

(i) The taxpayer acquired any mineral property from the transferor in a transaction described in section 23(ff)(3) of the Internal Revenue Code of 1939, excluding the reference therein to section 113(a)(13),

(ii) The taxpayer acquired any mineral property by reason of the acquisition of assets of a corporation in a transaction described in section 381(a) as a result of which the taxpayer succeeds to and takes into account the items described in section 381(c),

(iii) The taxpayer acquired any mineral property under circumstances which make applicable any of the following sections of the Internal Revenue Code:

(a) Section 334(b)(1), relating to the liquidation of a subsidiary where the basis of the property in the hands of the distributee is the same as it would be in the hands of the transferor.

(b) Section 362 (a) and (b), relating to property acquired by a corporation as

paid-in surplus or as a contribution to capital, or in connection with a transaction to which section 351 applies.

(c) Section 372(a), relating to reorganization in certain receiverships and bankruptcy proceedings.

(d) Section 373(b)(1), relating to property of a railroad corporation acquired in certain bankruptcy or receivership proceedings.

(e) Section 1051, relating to property acquired by a corporation that is a member of an affiliated group.

(f) Section 1082, relating to property acquired pursuant to a Securities Exchange Commission order.

(2) For purposes of applying the limitations imposed by section 617(h):

(i) The partner, and not the partnership, shall be considered as the taxpayer (see paragraph (a)(8)(iii) of § 1.702-1), and

(ii) An electing small business corporation, as defined in section 1371(b), and not its shareholders, shall be considered as the taxpayer.

(3) For purposes of subparagraph (1)(iii) (b) of this paragraph, relating to a transaction to which section 362 (a) and (b) applies or to which section 351 applies:

(i) If mineral property is acquired from a partnership, the transfer shall be considered as having been made by the individual partners, so that the amounts which each partner has deducted or deferred under sections 615 and 617 of the Internal Revenue Code of 1954 and section 23(ff) of the Internal Revenue Code of 1939 shall be taken into account, or

(ii) If an interest in a partnership having mineral property is transferred, the transfer shall be considered as a transfer of mineral property by the partner or partners relinquishing an interest, so that the amounts which each such partner has deducted or deferred under sections 615 and 617 of the Internal Revenue Code of 1954 and section 23(ff) of the Internal Revenue Code of 1939 shall be taken into account.

(e) *Examples.* The application of the provisions of this section may be illustrated by the following example:

*Example 1.* A calendar year taxpayer (who has never claimed the benefits of section 617) received in 1970 a mineral deposit from X Corporation under a distribution in complete

liquidation of the latter under conditions which make the provisions of section 334(b)(1) applicable in determining the basis of the property in the hands of the taxpayer. During the year 1969, X Corporation expended \$60,000 for exploration expenditures which it elected to treat under section 615(b) as deferred expenses. Subsequent to the transfer the taxpayer made similar expenditures for domestic exploration of \$250,000 and \$140,000, for the years 1970, and 1971, respectively, which the taxpayer elected to deduct. In 1972, the taxpayer made expenditures for domestic exploration of \$100,000 and for foreign exploration of \$50,000. The taxpayer may deduct the \$100,000 domestic exploration expenditures but may not deduct any portion of the \$50,000 of foreign exploration expenditures because the \$400,000 limitation of section 617(h) applies.

*Example 2.* In 1971, A and B transfer assets to a corporation in a transfer to which section 351 applied. Among the assets transferred by A is a mineral lease with respect to certain coal lands. A has deducted exploration expenditures under section 615 for the years 1968 and 1969 in the amounts of \$50,000 and \$100,000, respectively, made with respect to other deposits not included in the transfer to the corporation. The corporation is required to take into account the deductions previously made by A for purpose of applying the \$400,000 limitation on deduction of foreign exploration expenditures. Thus, if in 1970 the corporation incurred \$400,000 of foreign exploration expenditures, the maximum which it could deduct under section 617(a) is \$250,000.

[T.D. 7192, 37 FR 12944, June 30, 1972]

### § 1.617-3 Recapture of exploration expenditures.

(a) *In general.* (1)(i) Except as provided in subparagraphs (2) and (3) of this paragraph, if in any taxable year any mine (as defined in paragraph (c) of this section) with respect to which deductions have been allowed under section 617(a) reaches the producing stage (as defined in paragraph (c) of this section) the deduction for depletion under section 611 (whether determined under § 1.611-2 or under section 613) with respect to the property shall be disallowed for the taxable year and each subsequent taxable year until the aggregate amount of depletion which would be allowable but for section 617(b)(1)(B) and this subparagraph equals the amount of the adjusted exploration expenditures (determined under section 617(f)(1) and paragraph (d) of this section) attributable to the