SCOMM

#46:13

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 23, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to allowable depreciation methods for oil and gas producers and pipelines.

Section 1 of the bill repeals a statutory provision that requires corporations engaged in oil or gas production or pipeline transportation to use a depreciation method allowed under sec. 167 of the Internal Revenue Code. as that section read on June 30, 1981. (26 U.S.C. sec. 167.) Repeal of this provision will allow these corporations to use the ACRS (accelerated cost recovery system) method of depreciation, which is the method now permitted by federal law and used by most taxpayers for federal purposes.

The current provision creates problems both for taxpayers and the Department of Revenue. Strict compliance by the oil and gas companies is virtually impossible, because the law requires separate accounting for a corporation's worldwide assets. Likewise, the law is difficult for the department to administer. First, the department does not now have resources or personnel available to audit a major petroleum company's worldwide depreciation expense. Secondly, because the state depreciation deduction does not conform to federal depreciation, the department is unable to rely on sources such as the Internal Revenue Service and independent accountants to verify accuracy of deductions reported.

While repeal will benefit both the department and the companies, revenues will not be affected. The existing law renders no additional revenues to the state, other than revenues indirectly generated as a result of the accelerated collection of revenues. Under the current law, there is no difference in the total depreciation expense ultimately taken, although there may be a difference in the period of

time over which an asset is depreciated. While this timing difference may result in increased revenues in earlier years, the acceleration is offset by a corresponding decrease in revenues in subsequent years.

Section 2 of the bill makes the change in current law applicable to tax years beginning after December 31, 1984.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date 10/19/84

REQUEST
Bill/Resolution No: HB 101
Title: Allowable depreciation methods for oil & gas producers and pipelines
Sponsor: Governor
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Department of Revenue
Program Category Affected: Collection and Management
BRU, Program of Subprogram(s) Affected:
Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES	-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-	-0-	-0-	-0-	-0-	-0-
400 SUPPLIES	-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-	-0-	-0-	-0-	-0-	-0-
600 LANDS & STRUCTURES	-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS	-	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-	-0-	-0-	-0-	-0-	-0-
REVENUE	-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND	-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page for analysis.

Prepared By: Maureen O'Brien *Maureen O'Brien* Phone: 465-2320
Division: Audit Division Date: 10/19/84

Approved by Commissioner: Date:
Agency:

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

An Act relating to allowable depreciation methods for oil and gas producers and pipelines --

Analysis:

Currently corporations engaged in oil or gas production or pipeline transportation in Alaska are required to use a different depreciation method for Alaska income tax purposes than the method used for Federal income tax purposes. The effect of the current depreciation provision is to create a difference in the time the depreciation expense is taken on the federal return and the time the depreciation expense is taken on the Alaska return. There should be no difference in the total depreciation expense ultimately taken. For Alaska, this law is most advantageous when the timing difference results in a smaller depreciation deduction for Alaska purposes in the earlier years of an asset's useful life as the state's revenues are then accelerated. This acceleration, however, will be offset by a corresponding decrease in revenues in later years. In summary, the existing law renders no additional revenues to the state other than those indirectly generated as a result of the accelerated collection of revenues.

The proposed amendment to AS 43.20.072 would return corporations engaged in oil or gas production or pipeline transportation in Alaska to a federal basis for depreciation. It is impossible to determine the exact impact on the state's revenues as a result of this amendment. There may be a short-term decrease in revenues, however, over the long-term there should be no impact on the state's revenues.

SUMMARY/EXPLANATION OF INTENT

The essential effect of the current depreciation provision in the law is to create a difference between the time when the depreciation expense is taken on the federal return and the time depreciation expense is taken on the Alaska return. There is no difference in the total depreciation expense ultimately taken although there may be a difference in the period of time over which an asset is depreciated. For Alaska, this law is most advantageous when the timing difference results in a smaller depreciation deduction for Alaska purposes in the earlier years of an asset's useful life, as the state's revenues are then accelerated. This acceleration, however, will be offset by a corresponding decrease in revenues in later years. Among the returns filed for 1982, the first year the law was in effect, there were some cases where the depreciation deduction for Alaska purposes was greater than that taken for federal purposes, resulting in a deferral of revenues. After netting this adjustment for all the oil and gas companies in 1982, this law resulted in approximately $5 million in accelerated revenues.

From the taxpayer's viewpoint, the benefits the state derives from this acceleration of revenues are not commensurate with the burdens of efforts and costs required of the taxpayers to comply specifically with the unique demands of Alaska's law. A special computer program and separate accounting for a corporation's worldwide assets would be necessary to meet the law's exact requirements. None of the oil and gas companies audited to date have fulfilled the letter of the law; instead all have substituted calculations prepared for other purposes that approximated the Alaska requirement. It has been necessary for the department to deal with the variations by regulation.

From the Audit Division's standpoint, practically speaking, the law is exceedingly difficult, if not impossible, to administer effectively and efficiently because of the difficulty in auditing the taxpayers' compliance with it. An audit of a major petroleum company's worldwide depreciation expense is far beyond the scope of the Division's audits. By divorcing Alaska's depreciation deduction from the federal depreciation, the law deprives the state of its ability to rely on third parties such as the IRS and independent CPA's to insure the accuracy of the depreciation deduction. This reliance on third party policing is especially desirable in the instance of depreciation since the Division itself does not comprehensively audit the deduction.

Further complicating the situation as it stands, is the fact that, absent some very involved and detailed recordkeeping by the taxpayers, for certain other items of income and expense affected by depreciation expense, such as the computation of gain or loss upon the deposition of an asset and the relevant Section 1245 and 1250 recapture, the amounts reported will not properly reflect the federal/state differences. It is highly unlikely that taxpayers will prepare the requisite records; hence, more erroneous reporting will result.

In summary, the existing law renders no additional revenues to the state other than those indirectly generated as a result of the accelerated collection of revenues. Furthermore, the existing law is not being faithfully complied with by the taxpayers and cannot satisfactorily be audited by the Audit Division. The effect of the amendment to the law would be to return taxpayers to a federal basis for depreciation. This change would promote conformity with the law and enhances its effective administration.

An Act relating to allowable depreciation methods for oil and gas producers and pipelines --

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Further complicating the situation as it stands, is the fact that, absent some very involved and detailed recordkeeping by the taxpayers, for certain other items of income and expense affected by depreciation expense, such as the computation of gain or loss upon the deposition of an asset and the relevant Section 1245 and 1250 recapture, the amounts reported will not properly reflect the federal/state differences. It is highly unlikely that taxpayers will prepare the requisite records; hence, more erroneous reporting will result.

In summary, the existing law renders no additional revenues to the state other than those indirectly generated as a result of the accelerated collection of revenues. Furthermore, the existing law is not being faithfully complied with by the taxpayers and cannot satisfactorily be audited by the Audit Division. The effect of the amendment to the law would be to return taxpayers to a federal basis for depreciation. This change would promote conformity with the law and enhances its effective administration.

§ 167. Depreciation

(a) **General rule.**—There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

(1) of property used in the trade or business, or

(2) of property held for the production of income.

(b) **Use of certain methods and rates.**—For taxable years ending after December 31, 1953, the term "reasonable allowance" as used in subsection (a) shall include (but shall not be limited to) an allowance computed in accordance with regulations prescribed by the Secretary, under any of the following methods:

(1) the straight line method,

(2) the declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (1),

(3) the sum of the years-digits method, and

(4) any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in paragraph (2).

Nothing in this subsection shall be construed to limit or reduce an allowance otherwise allowable under subsection (a).

(c) **Limitations on use of certain methods and rates.**—Paragraphs (2), (3) and (4) of subsection (b) shall apply only in the case of property (other than intangible property) described in subsection (a) with a useful life of 3 years or more—

(1) the construction, reconstruction, or erection of which is completed after December 31, 1953, and then only to that portion of the basis which is properly attributable to such construction, reconstruction, or erection after December 31, 1953, or

(2) acquired after December 31, 1953, if the original use of such property commences with the taxpayer and commences after such date.

(d) **Agreement as to useful life on which depreciation rate is based.**—Where, under regulations prescribed by the Secretary, the taxpayer and the Secretary have, after August 16, 1954, entered into an agreement in writing specifically dealing with the useful life and rate of depreciation of any property, the rate so agreed upon shall be binding on both the taxpayer and the Secretary in the absence of

facts or circumstances not taken into consideration in the adoption of such agreement. The responsibility of establishing the existence of such facts and circumstances shall rest with the party initiating the modification. Any change in the agreed rate and useful life specified in the agreement shall not be effective for taxable years before the taxable year in which notice in writing by certified mail or registered mail is served by the party to the agreement initiating such change.

(e) Change in method.—

(1) Change from declining balance method.—In the absence of an agreement under subsection (d) containing a provision to the contrary, a taxpayer may at any time elect in accordance with regulations prescribed by the Secretary to change from the method of depreciation described in subsection (b)(2) to the method described in subsection (b)(1).

(2) Change with respect to section 1245 property.—A taxpayer may, on or before the last day prescribed by law (including extensions thereof) for filing his return for his first taxable year beginning after December 31, 1962, and in such manner as the Secretary shall by regulations prescribe, elect to change his method of depreciation in respect of section 1245 property (as defined in section 1245(a)(3)) from any declining balance or sum of the years-digits method to the straight line method. An election may be made under this paragraph notwithstanding any provision to the contrary in an agreement under subsection (d).

(3) Change with respect to section 1250 property.—A taxpayer may, on or before the last day prescribed by law (including extensions thereof) for filing his return for his first taxable year beginning after December 31, 1975, and in such manner as the Secretary shall by regulation prescribe, elect to change his method of depreciation in respect of section 1250 property (as defined in section 1250(c)) from any declining balance or sum of the years-digits method to the straight line method. An election may be made under this paragraph notwithstanding any provision to the contrary in an agreement under subsection (d).

(f) Salvage value.—

(1) General rule.—Under regulations prescribed by the Secretary, a taxpayer may, for purposes of computing the allowance under subsection (a) with respect to personal property, reduce the amount taken into account as salvage value by an amount which does not exceed 10 percent of the basis of such property (as determined under subsection (g) as of the time as of which such salvage value is required to be determined).

(2) Personal property defined.—For purposes of this subsection, the term "personal property" means depreciable personal

property (other than livestock)
more acquired after October 16,

(g) **Basis for depreciation.**—The b
nd tear, and obsolescence are to be
rty shall be the adjusted basis provi
ose of determining the gain on the
property.

(h) **Life tenants and beneficiarie**
ase of property held by one person
other person, the deduction shall be
were the absolute owner of the prop
ife tenant. In the case of property
duction shall be apportioned betwe
he trustee in accordance with the
trument creating the trust, or, in th
he basis of the trust income allocab
ate, the allowable deduction shall b
nd the heirs, legatees, and devisee
he estate allocable to each.

(i) **Limitation in case of propert**
the **suspension period.—**

(1) In general.—Under regu
tary, paragraphs (2), (3), and
apply in the case of real proper
erty (as defined in section 48(
reconstruction, or erection of
gins during the suspension peri
der placed during such period,
ulations prescribed by the Secr
provided by paragraphs (3), (4
tion 48(h) shall be applied for
tence. In applying this paragr
be taken into account only th
properly attributable to constru
before May 24, 1967.

(2) Exception.—Paragraph
real property selected by the t
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selected by the taxpayer under
$50,000. Under regulations p
similar to the rules provided b
shall be applied for purposes of

(3) Suspension period.—For
term "suspension period" mea
ber 10, 1966, and ending on Mar

property (other than livestock) with a useful life of 3 years or more acquired after October 16, 1962.

(g) **Basis for depreciation.**—The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 1011 for the purpose of determining the gain on the sale or other disposition of such property.

(h) **Life tenants and beneficiaries of trusts and estates.**—In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust, the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each. In the case of an estate, the allowable deduction shall be apportioned between the estate and the heirs, legatees, and devisees on the basis of the income of the estate allocable to each.

(i) **Limitation in case of property constructed or acquired during the suspension period.**—

(1) **In general.**—Under regulations prescribed by the Secretary, paragraphs (2), (3), and (4) of subsection (b) shall not apply in the case of real property which is not section 38 property (as defined in section 48(a)) if the physical construction, reconstruction, or erection of such property by any person begins during the suspension period, or begins, pursuant to an order placed during such period, before May 24, 1967. Under regulations prescribed by the Secretary, rules similar to the rules provided by paragraphs (3), (4), (7), (8), (9), and (10) of section 48(h) shall be applied for purposes of the preceding sentence. In applying this paragraph to any property, there shall be taken into account only that portion of the basis which is properly attributable to construction, reconstruction, or erection before May 24, 1967.

(2) **Exception.**—Paragraph (1) shall not apply to any item of real property selected by the taxpayer if the cost of such property (when added to the cost of all other items of real property selected by the taxpayer under this paragraph) does not exceed $50,000. Under regulations prescribed by the Secretary, rules similar to the rules provided by paragraph (2) of section 48(c) shall be applied for purposes of this paragraph.

(3) **Suspension period.**—For purposes of this subsection, the term "suspension period" means the period beginning on October 10, 1966, and ending on March 9, 1967.

(j) Special rules for section 1250 property.—

(1) General rule.—Except as provided in paragraphs (2) and (3), in the case of section 1250 property, subsection (b) shall not apply and the term "reasonable allowance" as used in subsection (a) shall include an allowance computed in accordance with regulations prescribed by the Secretary, under any of the following methods:

(A) the straight line method,

(B) the declining balance method, using a rate not exceeding 150 percent of the rate which would have been used had the annual allowance been computed under the method described in subparagraph (A), or

(C) any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in subparagraph (B).

Nothing in this paragraph shall be construed to limit or reduce an allowance otherwise allowable under subsection (a) except where allowable solely by reason of paragraph (2), (3), or (4) of subsection (b).

(2) Residential rental property.—

(A) In general.—Paragraph (1) of this subsection shall not apply, and subsection (b) shall apply in any taxable year, to a building or structure—

(i) which is residential rental property located within the United States or any of its possessions, or located within a foreign country if a method of depreciation for such property comparable to the method provided in subsection (b)(2) or (3) is provided by the laws of such country, and

(ii) the original use of which commences with the taxpayer.

In the case of residential rental property located within a foreign country, the original use of which commences with the taxpayer, if the allowance for depreciation provided under the laws of such country for such property is greater than that provided under paragraph (1) of this subsection, but less than that provided under subsection (b), the allowance for depreciation under subsection (b) shall be limited to the amount provided under the laws of such country.

(B) **Definition.**—For purposes of subparagraph (A), a building or structure shall be considered to be residential rental property for any taxable year only if 80 percent or more of the gross rental income from such building or structure for such year is rental income from dwelling units (within the meaning of subsection (k)(3)(C)). For purposes of the preceding sentence, if any portion of such building or structure is occupied by the taxpayer, the gross rental income from such building or structure shall include the rental value of the portion so occupied.

(C) **Change in method of depreciation.**—Any change in the computation of the allowance for depreciation for any taxable year, permitted or required by reason of the application of subparagraph (A), shall not be considered a change in a method of accounting.

(3) **Property constructed, etc., before July 25, 1969.**—Paragraph (1) of this subsection shall not apply, and subsection (b) shall apply, in the case of property—

(A) the construction, reconstruction, or erection of which was begun before July 25, 1969, or

(B) for which a written contract entered into before July 25, 1969, with respect to any part of the construction, reconstruction, or erection or for the permanent financing thereof, was on July 25, 1969, and at all times thereafter, binding on the taxpayer.

(4) **Used section 1250 property.**—Except as provided in paragraph (5), in the case of section 1250 property acquired after July 24, 1969, the original use of which does not commence with the taxpayer, the allowance for depreciation under this section shall be limited to an amount computed under—

(A) the straight line method, or

(B) any other method determined by the Secretary to result in a reasonable allowance under subsection (a), not including—

(i) any declining balance method,

(ii) the sum of the years-digits method, or

(iii) any other method allowable solely by reason of the application of subsection (b)(4) or paragraph (1)(C) of this subsection.

(5) **Used residential rental property.**—In the case of section 1250 property which is residential rental property (as defined in paragraph (2)(B)) acquired after July 24, 1969, having a useful life of 20 years or more, the original use of which does not commence with the taxpayer, the allowance for depreciation

under this section shall be limited to an amount computed under—

(A) the straight line method,

(B) the declining balance method, using a rate not exceeding 125 percent of the rate which would have been used had the annual allowance been computed under the method described in subparagraph (A), or

(C) any other method determined by the Secretary to result in a reasonable allowance under subsection (a), not including—

(i) the sum of the years-digits method,

(ii) any declining balance method using a rate in excess of the rate permitted under subparagraph (B), or

(iii) any other method allowable solely by reason of the application of subsection (b)(4) or paragraph (1)(C) of this subsection.

(6) Special rules.—

(A) Under regulations prescribed by the Secretary, rules similar to the rules provided in paragraphs (5), (9), (10), and (13) of section 48(h) shall be applied for purposes of paragraphs (3), (4), and (5) of this subsection.

(B) For purposes of paragraphs (2), (4), and (5), if section 1250 property which is not property described in subsection (a) when its original use commences, becomes property described in subsection (a) after July 24, 1969, such property shall not be treated as property the original use of which commences with the taxpayer.

(C) Paragraphs (4) and (5) shall not apply in the case of section 1250 property acquired after July 24, 1969, pursuant to a written contract for the acquisition of such property or for the permanent financing thereof, which was, on July 24, 1969, and at all times thereafter, binding on the taxpayer.

(k) Depreciation of expenditures to rehabilitate low-income rental housing.—

(1) 60-month rule.—The taxpayer may elect, in accordance with regulations prescribed by the Secretary, to compute the depreciation deduction provided by subsection (a) attributable to rehabilitation expenditures incurred with respect to low-income rental housing after July 24, 1969, and before January 1, 1979, under the straight line method using a useful life of 60 months and no salvage value. Such method shall be in lieu of any other method of computing the depreciation deduction under subsection (a), and in lieu of any deduction for amortization, for such expenditures.

(2) Limitations.—

(A) The aggregate amou
paid or incurred by the tax
ing unit in any low-incom
taken into account under
$20,000.

(B) Rehabilitation expen
taxpayer in any taxable ye
unit in any low-income re
account under paragraph (
consecutive years, includin
amount of such expenditure

(3) Definitions.—For purpos

(A) Rehabilitation expe
tion expenditures" means a
count and incurred for pr
ments to property (or rela
of 5 years or more, in conn
an existing building for l
such term does not include
building or any interest th

(B) Low-income rental h
rental housing" means any
which are held for occupan
and individuals of low or
by the Secretary in a man
Housing Program under
Housing Act of 1937 pursu
der this subsection.

(C) Dwelling unit.—The
house or an apartment use
tions in a building or struc
in a hotel, motel, inn, or
one-half of the units in whi

(D) Rehabilitation expe
tion expenditures incurred
entered into before Januar
penditures incurred with r
ing the rehabilitation of w
1979, shall be deemed incu

(l) Reasonable allowance in case

(1) Pre-1970 public utility pr

(A) In general.—In the
ty property, the term "re
subsection (a) means an all

(i) a subsection (l) n

(2) Limitations.—

(A) The aggregate amount of rehabilitation expenditures paid or incurred by the taxpayer with respect to any dwelling unit in any low-income rental housing which may be taken into account under paragraph (1) shall not exceed $20,000.

(B) Rehabilitation expenditures paid or incurred by the taxpayer in any taxable year with respect to any dwelling unit in any low-income rental housing shall be taken into account under paragraph (1) only if over a period of two consecutive years, including the taxable year, the aggregate amount of such expenditures exceeds $3,000.

(3) Definitions.—For purposes of this subsection—

(A) **Rehabilitation expenditures.**—The term "rehabilitation expenditures" means amounts chargeable to capital account and incurred for property or additions or improvements to property (or related facilities) with a useful life of 5 years or more, in connection with the rehabilitation of an existing building for low-income rental housing; but such term does not include the cost of acquisition of such building or any interest therein.

(B) **Low-income rental housing.**—The term "low-income rental housing" means any building the dwelling units in which are held for occupancy on a rental basis by families and individuals of low or moderate income, as determined by the Secretary in a manner consistent with the Leased Housing Program under section 8 of the United States Housing Act of 1937 pursuant to regulations prescribed under this subsection.

(C) **Dwelling unit.**—The term "dwelling unit" means a house or an apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, inn, or other establishment more than one-half of the units in which are used on a transient basis.

(D) **Rehabilitation expenditures incurred.**—Rehabilitation expenditures incurred pursuant to a binding contract entered into before January 1, 1979, and rehabilitation expenditures incurred with respect to low-income rental housing the rehabilitation of which has begun before January 1, 1979, shall be deemed incurred before January 1, 1979.

(l) **Reasonable allowance in case of property of certain utilities.**—

(1) **Pre-1970 public utility property.**—

(A) **In general.**—In the case of any pre-1970 public utility property, the term "reasonable allowance" as used in subsection (a) means an allowance computed under—

(i) a subsection (*l*) method, or

(ii) the applicable 1968 method for such property.

Except as provided in subparagraph (B), clause (ii) shall apply only if the taxpayer uses a normalization method of accounting.

(B) Flow-through method of accounting in certain cases.—In the case of any pre-1970 public utility property, the taxpayer may use the applicable 1968 method for such property if—

(i) the taxpayer used a flow-through method of accounting for such property for its July 1969 accounting period, or

(ii) the first accounting period with respect to such property is after the July 1969 accounting period, and the taxpayer used a flow-through method of accounting for its July 1969 accounting period for the property on the basis of which the applicable 1968 method for the property in question is established.

(2) Post-1969 public utility property.—In the case of any post-1969 public utility property, the term "reasonable allowance" as used in subsection (a) means an allowance computed under—

(A) a subsection (*l*) method,

(B) a method otherwise allowable under this section if the taxpayer uses a normalization method of accounting, or

(C) the applicable 1968 method, if, with respect to its pre-1970 public utility property of the same (or similar) kind most recently placed in service, the taxpayer used a flow-through method of accounting for its July 1969 accounting period.

(3) Definitions.—For purposes of this subsection—

(A) Public utility property.—The term "public utility property" means property used predominantly in the trade or business of the furnishing or sale of—

(i) electrical energy, water, or sewage disposal services,

(ii) gas or steam through a local distribution system,

(iii) telephone services, or other communication services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962 (47 U.S.C. 701), or

(iv) transportation of gas or steam by pipeline,

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political

subdivision thereof, by any ag
the United States, or by a publ
commission or other similar bo
subdivision thereof.

(B) Pre-1970 public utility
1970 public utility property" n
public utility property in the h
time before January 1, 1970.

(C) Post-1969 public utility
1969 public utility property" me
erty which is not pre-1970 public

(D) Applicable 1968 method.–
method" means, with respect t
erty—

(i) the method of depreci
respect to such property fo
which a return was filed bef

(ii) if clause (i) does no
the taxpayer on a return fo
which a return was filed b
respect to its public utility
(or if there is no property
of the most similar kind) m
ice, or

(iii) if neither clause (i)
tion (*l*) method.

In the case of any section 125
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(E) Applicable 1968 method i
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method) with respect to any p
timely application for change
before August 1, 1969, or in th
pense for purposes of reflecti
regulated books of account for
riod, such other method shall be
1968 method with respect to su
ty property of the same (or
placed in service.

(F) Subsection (*l*) method.–
method" means any method det
result in a reasonable allowanc

subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

(B) **Pre-1970 public utility property.**—The term "pre-1970 public utility property" means property which was public utility property in the hands of any person at any time before January 1, 1970.

(C) **Post-1969 public utility property.**—The term "post-1969 public utility property" means any public utility property which is not pre-1970 public utility property.

(D) **Applicable 1968 method.**—The term "applicable 1968 method" means, with respect to any public utility property—

(i) the method of depreciation used on a return with respect to such property for the latest taxable year for which a return was filed before August 1, 1969,

(ii) if clause (i) does not apply, the method used by the taxpayer on a return for the latest taxable year for which a return was filed before August 1, 1969, with respect to its public utility property of the same kind (or if there is no property of the same kind, property of the most similar kind) most recently placed in service, or

(iii) if neither clause (i) nor (ii) applies, a subsection (*l*) method.

In the case of any section 1250 property to which subsection (j) applies, the term "applicable 1968 method" means the method permitted under subsection (j) which is most nearly comparable to the applicable 1968 method determined under the preceding sentence.

(E) **Applicable 1968 method in certain cases.**—If the taxpayer evidenced the intent to use a method of depreciation other than its applicable 1968 method or a subsection (*l*) method) with respect to any public utility property in a timely application for change of accounting method filed before August 1, 1969, or in the computation of its tax expense for purposes of reflecting operating results in its regulated books of account for its July 1969 accounting period, such other method shall be deemed to be its applicable 1968 method with respect to such property and public utility property of the same (or similar) kind subsequently placed in service.

(F) **Subsection (*l*) method.**—The term "subsection (*l*) method" means any method determined by the Secretary to result in a reasonable allowance under subsection (a), oth-

er than (i) a declining balance method, (ii) the sum of the years-digits method, or (iii) any other method allowable solely by reason of the application of subsection (b)(4) or (j)(1)(C).

(G) Normalization method of accounting.—In order to use a normalization method of accounting with respect to any public utility property—

(i) the taxpayer must use the same method of depreciation to compute both its tax expense and its depreciation expense for purposes of establishing its cost of service for ratemaking purposes and for reflecting operating results in its regulated books of account, and

(ii) if, to compute its allowance for depreciation under this section, it uses a method of depreciation other than the method it used for the purposes described in clause (i), the taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from the use of such different methods of depreciation.

(H) Flow-through method of accounting.—The taxpayer used a "flow-through method of accounting" with respect to any public utility property if it used the same method of depreciation (other than a subsection (*l*) method) to compute its allowance for depreciation under this section and to compute its tax expense for purposes of reflecting operating results in its regulated books of account.

(I) July 1969 accounting period.—The term "July 1969 accounting period" means the taxpayer's latest accounting period ending before August 1, 1969, for which it computed its tax expense for purposes of reflecting operating results in its regulated books of account.

For purposes of this paragraph, different declining balance rates shall be treated as different methods of depreciation.

(4) Special rules as to flow-through method.—

(A) Election as to new property representing growth in capacity.—If the taxpayer makes an election under this subparagraph before June 29, 1970, in the manner prescribed by the Secretary, in the case of taxable years beginning after December 31, 1970, paragraph (2)(C) shall not apply with respect to any post-1969 public utility property, to the extent that such property constitutes property which increases the productive or operational capacity of the taxpayer with respect to the goods or services described in paragraph (3)(A) and does not represent the replacement of existing capacity.

(B) Certain pending applications for changes in method.—In applying paragraph (1)(B), the taxpayer shall be

deemed to have used a flow-throug for its July 1969 accounting peric pre-1970 public utility property for application for change of accountin 1, 1969, if with respect to public same (or similar) kind most recent used a flow-through method of acco accounting period.

(5) Reorganizations, assets acquisitio a corporate reorganization, by reason o of the assets of one taxpayer by anothe the fact that any trade or business of th ratemaking by more than one body, or cumstances, the application of any prov to any public utility property does not c this subsection, the Secretary shall pro the application of such provisions in a the purposes of this subsection.

(m) Class lives.—

(1) In general.—In the case of a tax election under this subsection for the "reasonable allowance" as used in subs respect to property which is placed in s ble year and which is included in any life has been prescribed) only an allow life prescribed by the Secretary which anticipated useful life of that class of p or other group. The allowance so presc lations prescribed by the Secretary) per class life by not more than 20 percent half year) of such life.

(2) Certain first-year conventions n vention with respect to the time at wl placed in service shall be permitted ur generally would provide greater depreci the taxable year in which the assets ar would be permitted if all assets were p throughout the year and if depreciatio puted without regard to any convention.

(3) Making of election.—An electio for any taxable year shall be made at ner, and subject to such conditions as n Secretary by regulations.

(n) Straight line method in certain cases.-

(1) In general.—In the case of any part constructed, reconstructed, erected,

deemed to have used a flow-through method of accounting for its July 1969 accounting period with respect to any pre-1970 public utility property for which it filed a timely application for change of accounting method before August 1, 1969, if with respect to public utility property of the same (or similar) kind most recently placed in service, it used a flow-through method of accounting for its July 1969 accounting period.

(5) **Reorganizations, assets acquisitions, etc.**—If by reason of a corporate reorganization, by reason of any other acquisition of the assets of one taxpayer by another taxpayer, by reason of the fact that any trade or business of the taxpayer is subject to ratemaking by more than one body, or by reason of other circumstances, the application of any provisions of this subsection to any public utility property does not carry out the purposes of this subsection, the Secretary shall provide by regulations for the application of such provisions in a manner consistent with the purposes of this subsection.

(m) Class lives.—

(1) **In general.**—In the case of a taxpayer who has made an election under this subsection for the taxable year, the term "reasonable allowance" as used in subsection (a) means (with respect to property which is placed in service during the taxable year and which is included in any class for which a class life has been prescribed) only an allowance based on the class life prescribed by the Secretary which reasonably reflects the anticipated useful life of that class of property to the industry or other group. The allowance so prescribed may (under regulations prescribed by the Secretary) permit a variance from any class life by not more than 20 percent (rounded to the nearest half year) of such life.

(2) **Certain first-year conventions not permitted.**—No convention with respect to the time at which assets are deemed placed in service shall be permitted under this section which generally would provide greater depreciation allowances during the taxable year in which the assets are placed in service than would be permitted if all assets were placed in service ratably throughout the year and if depreciation allowances were computed without regard to any convention.

(3) **Making of election.**—An election under this subsection for any taxable year shall be made at such time, in such manner, and subject to such conditions as may be prescribed by the Secretary by regulations.

(n) **Straight line method in certain cases.**—

(1) **In general.**—In the case of any property in whole or in part constructed, reconstructed, erected, or used on a site which

was, on or after June 30, 1976, occupied by a certified historic structure (as defined in section 191(d)(1)) which is demolished or substantially altered (other than by virtue of a certified rehabilitation as defined in section 191(d)(3)) after such date—

(A) subsections (b), (j), (k), and (*l*) shall not apply,

(B) the term "reasonable allowance" as used in subsection (a) shall mean only an allowance computed under the straight line method.

(2) Exception.—The limitations imposed by this subsection shall not apply to personal property.

(*o*) Substantially rehabilitated historic property.—

(1) General rule.—Pursuant to regulations prescribed by the Secretary, the taxpayer may elect to compute the depreciation deduction attributable to substantially rehabilitated historic property as though the original use of such property commenced with him. The election shall be effective with respect to the taxable year referred to in paragraph (2) and all succeeding taxable years.

(2) Substantially rehabilitated property.—For purposes of paragraph (1), the term "substantially rehabilitated historic property" means any certified historic structure (as defined in section 191(d)(1)) with respect to which the additions to capital account for any certified rehabilitation (as defined in section 191(d)(3)) during the 24-month period ending on the last day of any taxable year, reduced by any amounts allowed or allowable as depreciation or amortization with respect thereto, exceeds the greater of—

(A) the adjusted basis of such property, or

(B) $5,000.

The adjusted basis of the property shall be determined as of the beginning of the first day of such 24-month period, or of the holding period of the property (within the meaning of section 1250(e)), whichever is later.

(p) Depreciation of improvements in the case of mines, etc.—

For additional rule applicable to depreciation of improvements in the case of mines, oil and gas wells, other natural deposits, and timber, see section 611.

Aug. 16, 1954, c. 736, 68A Stat. 51; Sept. 2, 1958, Pub.L. 85-866, Title I, § 89(b), 72 Stat. 1665; Oct. 16, 1962, Pub.L. 87-834, § 13(b), (c)(1), 76 Stat. 1034; Nov. 8, 1966, Pub.L. 89-800, § 2, 80 Stat. 1513; June 13, 1967, Pub.L. 90-26, §§ 1, 2(b), 81 Stat. 57, 58; Dec. 30, 1969, Pub.L. 91-172, Title IV, § 441(a), Title V, § 521(a), (d), 83 Stat. 625, 649, 653; Dec. 10, 1971, Pub.L. 92-178, Title I, § 109(a), 85 Stat. 508; Jan. 3, 1975, Pub.L. 93-625, § 3(c), 88 Stat. 2109; Oct. 4, 1976, Pub.L. 94-455, Title II, §§ 202(c)(3), 203(a), Title XIX, §§

...(a)(27), 1906(b)(13)(A), Title XX ... 1530, 1768, 1834, 1918; Nov. 12, 19... 1555.

Historical No

Internal Revenue Code. Similar provisions to this section were contained in section 23(*l*), (n), 114(a) of the 1939 Internal Revenue Code.

Derivation and Similar Provisions. For derivation and similar provisions to section 23, I.R.C.1939, see Historical Note under section 161 of this title.

Section 114, I.R.C.1939, was derived from Act May 28, 1938, c. 289, § 114, 52 Stat. 494.

Provisions similar to those in section 114, I.R.C.1939, were contained in the following prior Revenue Acts:

1936—June 22, 1936, c. 690, § 114, 49 Stat. 1686.

1934—May 10, 1934, c. 277, § 114, 48 Stat. 710.

1932—June 6, 1932, c. 209, § 114, 47 Stat. 202.

1928—May 29, 1928, c. 852, § 114, 45 Stat. 821.

1926—Feb. 26, 1926, c. 27, § 204, 44 Stat. 14, as amended by Act June 29, 1939, c. 247, Title II, § 213(i), 53 Stat. 872.

1924—June 2, 1924, c. 234, § 204, 43 Stat. 258, as amended by Act June 29, 1939, c. 247, Title II, § 213(i), 53 Stat. 872.

References in Text. Section 8 of the United States Housing Act of 1937, referred to in subsec. (k)(3)(B), is classified to section 1437f of Title 42, The Public Health and Welfare.

The Communications Satellite Act of 1962 (47 U.S.C. 701), referred to in subsec. ...(3)(A)(iii), is Pub.L. 87-624, Aug. 31, 1962, 76 Stat. 419, which is classified generally to chapter 6 (section 701 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see Short Title note under section 701 of Title 47 and Tables volume.

1977 Amendment. Subsec. (k). Pub.L. ... substituted "January 1, 1979" for "January 1, 1978" wherever appearing in ... and (3)(D).

1976 Amendment. Subsec. (b). Pub.L. 94-455, § 1906(b)(13)(A), struck out "or his delegate" following "Secretary".

Subsec. (d). Pub.L. 94-455, §§ ...(a)(27)(A), 1906(b)(13)(A), substitut-

[illegible] 1906(b)(13)(A), Title XXI, § 2124(c)(1), (d)(1), 90 Stat. [illegible], 1768, 1834, 1918; Nov. 12, 1977, Pub.L. 95–171, § 4(a), 91 Stat. [illegible].

Historical Note

[illegible] **Revenue Code.** Similar [illegible] this section were contained [illegible], (n), 114(a) of the 1939 In[illegible] Code.

[illegible] and **Similar Provisions.** For [illegible] and similar provisions to sec[illegible] I.R.C.1939, see Historical Note [illegible] 161 of this title.

[illegible] I.R.C.1939, was derived [illegible] 28, 1938, c. 289, § 114, 52 Stat. [illegible]

[illegible] similar to those in section [illegible], were contained in the fol[illegible] Revenue Acts:

[illegible] 22, 1936, c. 690, § 114, 49 [illegible]

[illegible] 10, 1934, c. 277, § 114, 48 [illegible]

[illegible] 6, 1932, c. 209, § 114, 47 [illegible]

[illegible] May 29, 1928, c. 852, § 114, 45 [illegible]

[illegible] Feb. 26, 1926, c. 27, § 204, 44 [illegible], as amended by Act June 29, 1939, c. 247, Title II, § 213(i), 53 Stat. 872.

1924—June 2, 1924, c. 234, § 204, 43 Stat. 258, as amended by Act June 29, 1939, c. 247, Title II, § 213(i), 53 Stat. 872.

References in Text. Section 8 of the United States Housing Act of 1937, referred to in subsec. (k)(3)(B), is classified to section 1437f of Title 42, The Public Health and Welfare.

The Communications Satellite Act of 1962 (47 U.S.C. 701), referred to in subsec. [illegible], is Pub.L. 87–624, Aug. 31, 1962, 76 Stat. 419, which is classified generally to chapter 6 (section 701 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see Short Title note under section 701 of Title 47 and Tables volume.

[illegible] **Amendment.** Subsec. (k). Pub.L. [illegible] substituted "January 1, 1979" for [illegible] 1, 1978" wherever appearing in [illegible] (3)(D).

[illegible] **Amendment.** Subsec. (b). Pub.L. [illegible] 1906(b)(13)(A), struck out "or [illegible]" following "Secretary".

[illegible] (d). Pub.L. 94–455, §§ [illegible](27)(A), 1906(b)(13)(A), substituted "after August 16, 1954" for "after the date of enactment of this title" and struck out "or his delegate" following "Secretary" in first sentence preceding "shall be binding".

Subsec. (e). Pub.L. 94–455, §§ 202(c)(3), 1906(b)(13)(A), substituted in par. (3) "beginning after December 31, 1975" for "beginning after July 24, 1969" and in pars. (1) to (3) struck out "or his delegate" following "Secretary".

Subsec. (f)(1). Pub.L. 94–455, § 1906(b)(13)(A), struck out "or his delegate" following "Secretary".

Subsec. (f)(2). Pub.L. 94–455, § 1901(a)(27)(B), substituted "October 16, 1962" for "the date of enactment of the Revenue Act of 1962".

Subsec. (i). Pub.L. 94–455, § 1906(b)(13)(A), struck out in pars. (1) and (2) "or his delegate" following "Secretary".

Subsec. (j). Pub.L. 94–455, § 1906(b)(13)(A), struck out in pars. (1), (4)(B), (5)(C), and (6)(A) "or his delegate" following "Secretary".

Subsec. (k)(1). Pub.L. 94–455, §§ 203(a)(1), 1906(b)(13)(A), substituted reference to January 1, 1978 for reference to January 1, 1976 and struck out "or his delegate" following "Secretary".

Subsec. (k)(2)(A). Pub.L. 94–455, § 203(a)(2), substituted "$20,000" for "$15,000".

Subsec. (k)(3)(B). Pub.L. 94–455, §§ 203(a)(3), 1906(b)(13)(A), substituted "the Leased Housing Program under section 8 of the United States Housing Act of 1937" for "the policies of the Housing and Urban Development Act of 1968" and struck out "or his delegate" following "Secretary".

Subsec. (k)(3)(D). Pub.L. 94–455, § 203(a)(4), added subsec. (k)(3)(D).

Subsec. (*l*)(3)(F). Pub.L. 94–455, § 1906(b)(13)(A), struck out "or his delegate" following "Secretary".

Subsec. (*l*)(4)(A). Pub.L. 94–455, §§ 1901(a)(27)(C), 1906(b)(13)(A), substituted "before June 29, 1970," for "within 180 days after the date of the enactment of this subparagraph" and struck out "or his delegate" following "Secretary".

Even if tax court had duty to consider income taxpayer's uncontroverted and self-serving trial testimony given as establishing that his dominant motivation for loans was to make profit in his own land development business, tax court was also entitled to consider contemporaneous objective circumstances surrounding the loans, which permitted reasonable inference inconsistent with such testimony. Id.

141. Findings

Tax Court did not err in determining that dominant motivation of shareholders in guaranteeing third party's loan was investment-related and not business related, and, thus, that bad debt was nonbusiness, where only evidence of dominant motivation was size of shareholders' investment in third party. Tennessee Securities Inc. v. C.I.R., C.A.6, 1982, 674 F.2d 570.

Tax Court properly found that obligation with respect to which income taxpayer suffered loss was worthless where at time of payments principal debtor's estate was insolvent, but where there were two principal debtors on the bond, income taxpayer, seeking deduction for payment made on his guaranty, was bound to show that obligation of other debtor, on performance bond funded by surety in favor of county and water district, was also worthless to county or to surety, and same was true despite Tax Court's finding that second debtor was principal in name only to comply with local law and that liability thus fell upon taxpayer when his father, first-mentioned debtor, became insolvent. Hunsaker v. Commissioner of Internal Revenue Service, C.A.9, 1980, 615 F.2d 1253.

Where Tax Court found that income taxpayer's purpose in becoming actively involved in development corporation was to protect his father's very substantial investments and his own, not as shareholder but as creditor and perhaps also as future joint venturer, not to enter trade or business of managing corporations or with intent of becoming employee of corporation or of insuring development projects for his own businesses, Tax Court could find that taxpayer's payments made as guarantor on performance bonds were not result of connection with, nor were the losses incurred in, taxpayer's real estate and land development businesses. Id.

142. Review

For purposes of review of Commissioner's determination as to whether taxpayer is entitled to deduction for partially worthless debt, facts must be considered as they existed at time deduction was taken; of course, Commissioner's denial of partially worthless debt deduction does not preclude taxpayer from attempting to establish deduction for later years. Brimberry v. C.I.R., C.A.5, 1979, 588 F.2d 975.

Given church's consistently healthy operating revenues in 1968 and 1969 and prospect of successful reorganization in 1968, neither insolvency of church, Securities and Exchange Commission's complaint against church in 1967, nor church's institution of chapter X reorganization proceeding in 1968 necessarily demonstrated partial worthlessness of debt owed taxpayer by church and thus Commissioner's disallowance of taxpayer's claimed partially worthless debt deductions for 1967 and 1968 was neither arbitrary nor erroneous. Id.

§ 167. Depreciation

(a) General rule.—There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

(1) of property used in the trade or business, or

(2) of property held for the production of income.

In the case of recovery property (within the meaning of section 168), the deduction allowable under section 168 shall be deemed to constitute the reasonable allowance provided by this section, except with respect to that portion of the basis of such property to which subsection (k) applies.

[See main volume for text of (b) and (c)]

(d) Agreement as to useful life on which depreciation rate is based.—Where, under regulations prescribed by the Secretary, the taxpayer and the Secretary have, after August 16, 1954, entered into an agreement in writing specifically dealing with the useful life and rate of depreciation of any property, the rate so agreed upon shall be binding on both the taxpayer and the Secretary in the absence of facts or circumstances not taken into consideration in the adoption of such agreement. The responsibility of establishing the existence of such facts and circumstances shall rest with the party initiating the modification. Any change in the agreed rate and useful life specified in the agreement shall not be effective for taxable years before the taxable year in which notice in writing by certified mail or registered mail is served by the party to the agreement initiating such change. This subsection shall not apply with respect to recovery property defined in section 168.

[See main volume for text of (e) to (h)]

[(i) Repealed. Pub.L. 95–600, Title III, § 312(c)(4), Nov. 6, 1978, 92 Stat. 2826]

[See main volume for text of (j)]

(k) Depreciation of expenditures to rehabilitate low-income rental housing.—

(1) 60-month rule.—The taxpayer may elect, in accordance with regulations prescribed by the Secretary, to compute the depreciation deduction provided by subsection (a) attributable to rehabilitation expenditures incurred with respect to low-income rental housing after July 24, 1969, and before January 1, 1984, under the straight line method using a useful life of 60 months and no salvage value. Such method shall be in lieu of any other method of computing the depreciation deduction under subsection (a), and in lieu of any deduction for amortization, for such expenditures.

(2) Limitations.—

(A) Except as provided in subparagraph (B), the aggregate amount of rehabilitation expenditures paid or incurred by the taxpayer with respect to any dwelling unit in any low-income rental housing which may be taken into account under paragraph (1) shall not exceed $20,000.

(B) The aggregate amount of rehabilitation expenditures paid or incurred by the taxpayer with respect to any dwelling unit in any low-income rental housing which may be taken into account under paragraph (1) may exceed $20,000, but shall not exceed $40,000, if the rehabilitation is conducted pursuant to a program certified by the Secretary of Housing and Urban Development, or his delegate, or by the government of a State or political subdivision of the United States and if:

(i) the certification of development costs is required;

(ii) the tenants occupy units in the property as their principal residence and the program provides for sale of the units to tenants demonstrating home ownership responsibility; and

(iii) the leasing and sale of such units are pursuant to a program in which the sum of the taxable income, if any, from leasing of each such unit, for the entire period of such leasing, and the amount realized from sale or other disposition of a unit, if sold, normally does not exceed the excess of the taxpayer's cost basis for such unit of property, before adjustment under section 1016 for deductions under section 167, over the net tax benefits realized by the taxpayer, consisting of the tax

benefits from such deductions under section 167 minus the tax incurred on such taxable income from leasing, if any.

(C) Rehabilitation expenditures paid or incurred by the taxpayer in any taxable year with respect to any dwelling unit in any low-income rental housing shall be taken into account under paragraph (1) only if over a period of two consecutive years, including the taxable year, the aggregate amount of such expenditures exceeds $3,000.

(3) Definitions.—For purposes of this subsection—

[See main volume for text of (A) to (C)]

(D) Rehabilitation expenditures incurred.—Rehabilitation expenditures incurred pursuant to a binding contract entered into before January 1, 1984, and rehabilitation expenditures incurred with respect to low-income rental housing the rehabilitation of which has begun before January 1, 1984, shall be deemed incurred before January 1, 1984.

(*l*) Reasonable allowance in case of property of certain utilities.—

[See main volume for text of (1) and (2)]

(3) Definitions.—For purposes of this subsection—

[See main volume for text of (A) and (B)]

(C) Post-1969 public utility property.—The term "post-1969 public utility property" means any public utility property which is not pre-1970 public utility property and which is placed in service before January 1, 1981.

[See main volume for text of (D) to (F)]

(G) Normalization method of accounting.—In order to use a normalization method of accounting with respect to any public utility property—

[See main volume for text of (i) and (ii)]

For purposes of this subparagraph, rules similar to the rules of section 168(e)(3)(C) shall apply.

[See main volume for text of (H) and (I)]

For purposes of this paragraph, different declining balance rates shall be treated as different methods of depreciation.

[See main volume for text of (4) and (5)]

(m) Class lives.—

[See main volume for text of (1) to (3)]

(4) Termination.—This subsection shall not apply with respect to recovery property (within the meaning of section 168) placed in service after December 31, 1980.

[(n), (*o*) Repealed. Pub.L. 97-34, Title II, § 212(d)(1), Aug. 13, 1981, 95 Stat. 239]

(p) Straight line method for boilers fueled by oil or gas.—In the case of any boiler which, by reason of section 48(a)(10), is not section 38 property—

(1) subsections (b), (j), and (*l*) shall not apply, and

(2) the term "reasonable allowance" as used in subsection (a) shall mean only an allowance computed under the straight line method using a useful life equal to the class life prescribed by the Secretary under subsection (m) which is applicable to such property (determined without regard to the last sentence of subsection (m)(1)).

(q) Retirement or replacement of certain boilers, etc., fueled by oil or gas.—

(1) In general.—If—

(A) a boiler or other combustor was in use on October 1, 1978, and as of such date the principal fuel for such combustor was petroleum or petroleum products (including natural gas), and

(B) the taxpayer establishes to the satisfaction of the Secretary that such combustor will be retired or replaced on or before the date specified by the taxpayer,

then for the period beginning with the taxable year in which subparagraph (B) is satisfied, the term "reasonable allowance" as used in subsection (a)

includes an allowance under the stra
equal to the period ending with the
(B).

(2) Interest.—If the retirement or repl
occur on or before the date referred to in

(A) this subsection shall cease to ap
of such date, and

(B) interest at the rate determined
the tax benefit arising from the appli
to such combustor shall be due and
such tax benefit was available to th
referred to in paragraph (1)(B).

(r) Depreciation of improvements in the c

**For additional rule applicable to c
case of mines, oil and gas wells, oth
section 611.**

(As amended Nov. 6, 1978, Pub.L. 95-600, Title III,
92 Stat. 2826, 2857, 2901, 2902; Nov. 8, 1978, Pub.L.
Pub.L. 95-618, Title III, § 301(d)(3), (e)(1), 92 Stat.
§§ 2(c), (d), 3, 94 Stat. 3204, 3205; Dec. 28, 1980, Pu
1981, Pub.L. 97-34, Title II, §§ 203(a)-(c)(1), (d), 20
227, 239, 264; Jan. 6, 1983, Pub.L. 97-424, Title V,

1983 Amendment. Subsec. (*l*)(3)(G). Pub.L. 97-424, § 541(a)(2), added provision that, for the purposes of this paragraph, rules similar to the rules of section 168(e)(3)(C) of this title shall apply.

1981 Amendment. Subsec. (a). Pub.L. 97-34, § 203(a), added provision that, in the case of recovery property (within the meaning of section 168), the deduction allowable under section 168 shall be deemed to constitute the reasonable allowance provided by this section, except with respect to that portion of the basis of such property to which subsection (k) applies.

Subsec. (d). Pub.L. 97-34, § 203(d), provided that subsec. (d) did not apply with respect to recovery property defined in section 168.

Subsec. (k)(2). Pub.L. 97-34, § 264(a), substituted "Except as provided in subparagraph (B), the aggregate amount" for "The aggregate amount" in subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (l)(3)(C). Pub.L. 97-34, § 209(d)(3), added "and which is placed in service before January 1, 1981" following "pre-1970 public utility property".

Subsec. (m)(4). Pub.L. 97-34, § 203(b), added par. (4).

Subsecs. (n), (o). Pub.L. 97-34, § 212(d)(1), struck out subsec. (n) which dealt with the use of the straight line method of depreciation in certain cases and subsec. (o) which dealt with the method of depreciation to be used in the case of substantially rehabilitated historic property.

Subsec. (r). Pub.L. 97-34, § 203(c)(1), redesignated subsec. (s) as (r). Former subsec. (r), relating to the retirement-replacement-betterment method of calculating depreciation, was stricken out.

1980 Amendments. Subsec. (k). Pub.L. 96-541, § 3, substituted in pars. (1) and (3)(D) "January 1, 1984" for "January 1, 1982" wherever appearing.

includes an allowance under the straight line method using a useful life equal to the period ending with the date established under subparagraph (B).

(2) Interest.—If the retirement or replacement of any combustor does not occur on or before the date referred to in paragraph (1)(B)—

(A) this subsection shall cease to apply with respect to such combustor as of such date, and

(B) interest at the rate determined under section 6621 on the amount of the tax benefit arising from the application of this subsection with respect to such combustor shall be due and payable for the period during which such tax benefit was available to the taxpayer and ending on the date referred to in paragraph (1)(B).

(r) Depreciation of improvements in the case of mines, etc.—

For additional rule applicable to depreciation of improvements in the case of mines, oil and gas wells, other natural deposits, and timber, see section 611.

(As amended Nov. 6, 1978, Pub.L. 95–600, Title III, §§ 312(c)(4), 367, Title VII, § 701(f)(4), (6), 92 Stat. 2826, 2857, 2901, 2902; Nov. 8, 1978, Pub.L. 95–615, § 7(a), 92 Stat. 3098; Nov. 9, 1978, Pub.L. 95–618, Title III, § 301(d)(3), (e)(1), 92 Stat. 3200, 3201; Dec. 17, 1980, Pub.L. 96–541, §§ 2(c), (d), 3, 94 Stat. 3204, 3205; Dec. 28, 1980, Pub.L. 96–613, § 2(a), 94 Stat. 3579; Aug. 13, 1981, Pub.L. 97–34, Title II, §§ 203(a)–(c)(1), (d), 209(d)(3), 212(d)(1), 264(a), 95 Stat. 221, 222, 227, 239, 264; Jan. 6, 1983, Pub.L. 97–424, Title V, § 541(a)(2), 96 Stat. 2192.)

1983 Amendment. Subsec. (*l*)(3)(G). Pub.L. 97–424, § 541(a)(2), added provision that, for the purposes of this paragraph, rules similar to the rules of section 168(e)(3)(C) of this title shall apply.

1981 Amendment. Subsec. (a). Pub.L. 97–34, § 203(a), added provision that, in the case of recovery property (within the meaning of section 168), the deduction allowable under section 168 shall be deemed to constitute the reasonable allowance provided by this section, except with respect to that portion of the basis of such property to which subsection (k) applies.

Subsec. (d). Pub.L. 97–34, § 203(d), provided that subsec. (d) did not apply with respect to recovery property defined in section 168.

Subsec. (k)(2). Pub.L. 97–34, § 264(a), substituted "Except as provided in subparagraph (B), the aggregate amount" for "The aggregate amount" in subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (l)(3)(C). Pub.L. 97–34, § 209(d)(3), added "and which is placed in service before January 1, 1981" following "pre-1970 public utility property".

Subsec. (m)(4). Pub.L. 97–34, § 203(b), added par. (4).

Subsecs. (n), (o). Pub.L. 97–34, § 212(d)(1), struck out subsec. (n) which dealt with the use of the straight line method of depreciation in certain cases and subsec. (o) which dealt with the method of depreciation to be used in the case of substantially rehabilitated historic property.

Subsec. (r). Pub.L. 97–34, § 203(c)(1), redesignated subsec. (s) as (r). Former subsec. (r), relating to the retirement-replacement-betterment method of calculating depreciation, was stricken out.

1980 Amendments. Subsec. (k). Pub.L. 96–541, § 3, substituted in pars. (1) and (3)(D) "January 1, 1984" for "January 1, 1982" wherever appearing.

Subsec. (n)(4). Pub.L. 95–541, § 2(c), added par. (4).

Subsec. (o)(3). Pub.L. 96–541, § 2(d), added par. (3).

Subsec. (r). Pub.L. 96–613 added subsec. (r) and redesignated former subsec. (r) as (s).

Subsec. (s). Pub.L. 96–613 redesignated former subsec. (r) as (s).

1978 Amendments. Subsec. (i). Pub.L. 95–600, § 312(c)(4), struck out subsec. (i), which related to a limitation in the case of property constructed or acquired during the suspension period.

Subsec. (k). Pub.L. 95–615 substituted "January 1, 1979" for "January 1, 1978" wherever appearing in pars. (1) and (3)(D).

Pub.L. 95–600, § 367, substituted "January 1, 1982" for "January 1, 1979".

Subsec. (n). Pub.L. 95–600, § 701(f)(4), in par. (1), substituted "occupied by a certified historic structure (or by any structure in a registered historic district) which is demolished or substantially altered after such date" for "occupied by a certified historic structure (as defined in section 191(d)(1)) which is demolished or substantially altered (other than by virtue of a certified rehabilitation as defined in section 191(d)(3) after such date", inserted the "and" preceding subpar. (B), substituted "means" for "shall mean" in subpar. (B), and added provision that "The preceding sentence shall not apply if the last substantial alteration of the structure is a certified rehabilitation."; in par. (2), substituted heading "Exceptions" for "Exception", designated existing text as subpar. (A), and added subpar. (B); and added par. (3).

Subsec. (o). Pub.L. 95–600, § 701(f)(6), inserted in par. (1) "(other than property with respect to which an amortization deduction has been allowed to the taxpayer under section 191)" following "substantially rehabilitated historic property" and substituted in par. (2) "section 191(d)(4)" for "section 191(d)(3)".

(File Nos. 5762, 5815), P.2d (1983).

When sale has taken place. — A sale has taken place when crab are delivered to the processor in Alaska under a previously negotiated contract. Sjong v. State, Dep't of Revenue, Sup. Ct. Op. No. 2269 (File No. 4255), 622 P.2d 967 (1981), appeal dismissed, 454 U.S. 1131, 102 S. Ct. 986, 71 L. Ed. 2d 284 (1982), decided under former AS 43.20.130.

Sec. 43.20.072. Oil and gas producers and pipelines. (a) All business income of a taxpayer engaged in the production of oil or gas from a lease or property in this state or engaged in the transportation of oil or gas by pipeline in this state shall be apportioned to this state in accordance with the Multistate Tax Compact (AS 43.19) as modified by this section.

(b) A taxpayer's business income to be apportioned under this section to the state shall be the federal taxable income of the taxpayer's consolidated business for the tax period, except that

(1) taxes based on or measured by net income that are deducted in the determination of the federal taxable income shall be added back;

(2) intangible drilling and development costs that are deducted as expenses under 26 U.S.C. 263(c) (Internal Revenue Code) in the determination of the federal taxable income shall be capitalized and depreciated as if the option to treat them as expenses under 26 U.S.C. 263(c) (Internal Revenue Code) had not been exercised;

(3) depletion deducted on the percentage depletion basis under 26 U.S.C. 613 (Internal Revenue Code) in the determination of the federal taxable income shall be recomputed and deducted on the cost depletion basis under 26 U.S.C. 612 (Internal Revenue Code) and

(4) depreciation shall be computed on the basis of 26 U.S.C. 167 (Internal Revenue Code) as that section read on June 30, 1981.

(c) A taxpayer's business income shall be apportioned to this state by multiplying the taxpayer's income determined under (b) of this section by the apportionment factor applicable to the taxpayer among the following factors:

(1) the apportionment factor of a taxpayer subject to this section but not engaged in the production of oil and gas from a lease or property in this state during the tax period is a fraction, the numerator of which is the sum of the property factor under the Multistate Tax Compact (AS 43.19) and the sales factor under (d) of this section for the taxpayer for that tax period, and the denominator of which is two;

(2) the apportionment factor of a taxpayer subject to this section but not engaged in the pipeline transportation of oil or gas in this state during the tax period is a fraction, the numerator of which is the sum of the property factor under (e) of this section and the extraction factor under (f) of this section for the taxpayer for the tax period, and the denominator of which is two;

(3) the apportionment factor of a taxpayer engaged both in the production of oil or gas from a lease or property in this state and in the pipeline transportation of oil or gas in this state during the tax period

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STATES CONTINUE TO RESPOND TO ACRS IN DIVERSE WAYS

On August 13, 1981, the Economic Recovery Tax Act of 1981 became Public Law 97-34. Among the provisions of this Act was the establishment of a new and more rapid form of depreciation known as the Accelerated Cost Recovery System.

States have responded to ACRS in different ways. Among the states where changes in federal depreciation provisions are automatically accepted for state tax purposes, some states have passed legislation to reject ACRS and some have allowed only a portion of ACRS. Among the states where the adoption of ACRS is not automatic, some have acted to adopt ACRS and some have allowed a portion of ACRS depreciation. Twenty states have enacted legislation in 1981 or 1982 affecting the application of ACRS for state tax purposes.

As a result of these changes, 24 states and the District of Columbia were generally in conformity with federal depreciation provisions in 1982. (Two of these states have denied ACRS to certain industries.) Ten states allowed a flat percentage of depreciation determined under ACRS or made similar adjustments. Another ten states did not allow ACRS and required that depreciation for state tax purposes be determined under the same rules as before ACRS was enacted.

STATUS OF ACCELERATED COST RECOVERY SYSTEM
FOR
STATE CORPORATION INCOME TAXES AT END OF 1982

ACRS Allowed	Percentage of ACRS	ACRS Not Allowed
Alabama	Connecticut	Arkansas
Alaska(1)	Florida	California
Arizona	Kentucky(7)	Georgia
Colorado	Maine(6)(9)	New Jersey(6)(7)
Delaware	Minnesota	New York(6)
Hawaii	Ohio(7)	North Dakota(8)
Idaho	Pennsylvania(7)	Oklahoma(6)(9)
Illinois	Tennessee	Oregon
Indiana(2)	Virginia	South Carolina
Iowa	West Virginia	Utah(9)
Kansas		
Louisiana		
Maryland		
Massachusetts(3)		
(Michigan)(4)		
Mississippi		
Missouri		
Montana		
Nebraska		
New Hampshire		
New Mexico		
North Carolina		
Rhode Island		
Vermont		
Wisconsin(5)		
District of Columbia		

(1) Depreciation for oil and gas producers and pipelines is computed on the basis of section 167 of the Internal Revenue Code as that section read on June 30, 1981.
(2) ACRS not allowed in 1981.
(3) ACRS not available to individuals because the personal income tax is based on the Internal Revenue Code existing on November 6, 1978.
(4) No corporation income tax. ACRS allowed for personal income tax. Depreciation not relevant for single business tax.
(5) ACRS not available to public utilities.
(6) ACRS allowed in full in 1981.
(7) ACRS allowed in full for individuals.
(8) Individuals filing the short form may use ACRS because the short form is based on the current Internal Revenue Code.
(9) ACRS allowed in full for individuals and Subchapter S corporations.

(Prepared by FTA)

Legislation enacted by states to allow ACRS. Most of the states allowing ACRS tie their statutes or regulations to the current federal Internal Revenue Code. In anticipation of ACRS, Hawaii enacted legislation on June 17, 1981, providing that the state would conform to the new federal provisions.

Wisconsin enacted legislation on July 30, 1981, giving corporations and individuals the option of using depreciation under the current Internal Revenue Code, in effect incorporating ACRS when it was enacted.

Arizona, Idaho, Indiana, and Iowa tie their corporation income tax laws to the Internal Revenue Code of a specific date. In 1982, each of these states changed their reference dates so that ACRS would apply. In Arizona, Idaho, and Iowa, the changes were retroactive to 1981 tax years. In Indiana, ACRS was made effective with 1982 tax years. Indiana and Iowa raised their corporation income tax rates at the time they made ACRS applicable.

Alaska does not allow oil and gas producers and pipelines to use ACRS. By 1982 legislation, Wisconsin provided that telephone, telegraph, pipeline, gas, electric, and hot water utilities were not to use ACRS for state tax purposes.

Legislation enacted by states to disallow ACRS. Ten states do not allow ACRS. Four of these states have adopted legislation specifically rejecting ACRS. Oregon enacted legislation on August 17, 1981, disallowing ACRS for 1981 and 1982 tax years for personal and corporation income taxes. New Jersey, New York, and Oklahoma adopted legislation in 1982 rejecting ACRS. The legislation in New Jersey applies to tax years after 1981 but does not apply to personal income taxes. The legislation in New York applies to 1982 and 1983 tax years and to both personal and corporation taxes. The legislation in Oklahoma applies to property placed in service after 1981 but does not

...ply to personal income taxes or Subchapter S corporations.

Percentage of ACRS. Ten states accept ACRS as a starting point for determining depreciation for state tax purposes but in effect allow a deduction for depreciation that is a percentage of the amount determined under ACRS.

In January 1982, Connecticut provided that corporations are to take a declining percentage of the federal depreciation deduction for tax years 1981 through 1984. The percentages are 96 percent for 1981, 91 percent for 1982, 84 percent for 1983, and 77 percent for 1984. The unused portion of the depreciation may be taken as a deduction over a five-year period, one-fifth each year, beginning three years after the year in which it would otherwise have been claimed.

In April 1982, Florida enacted an excise tax equal to 2 percent of the excess of ACRS depreciation over straight line depreciation. The tax applies to tax years 1981 through 1984. The excise tax may be taken as a credit in the fifth year following the year for which the tax was paid.

In March 1982, Kentucky provided that, for tax years beginning before July 1, 1984, deductions under ACRS are to be divided by 1.4 to determine the depreciation deduction for state purposes. After July 1, 1984, ACRS may be claimed in full and the unused depreciation from the earlier years may be deducted over the next six years.

In December 1981, Maine authorized the use of ACRS for 1981 tax years only. In May 1982, Maine provided that whether ACRS would be allowed for 1982 would depend on whether the state budget officer determined that available revenues were sufficient. In December, he ruled that revenues were not sufficient. Consequently, corporate taxpayers are to add back 18 percent of the ACRS deduction to taxable income. The amount added back may be taken as a deduction in equal amounts during the next three years. ACRS applies in full for individuals and Subchapter S corporations.

In January 1982, Minnesota provided that personal and corporate taxpayers could claim 85 percent of ACRS for 1981 tax years and 83 percent for 1982. In March, Minnesota reduced the allowable percentage to 60 percent for real property, beginning with 1982 tax years, and 80 percent for other property, beginning with 1983 tax years. The unused depreciation may be claimed over a one to seven year period (depending on the class of the property) after the full federal deduction has been claimed.

In November 1981, Ohio provided that corporate taxpayers could either determine depreciation under the prior rules or add to taxable income 10 (continued on page 23)

FRANK BANE

Frank Bane, distinguished public servant and long-time head of the Council of State Governments, died January 23 at the age of 89. A native of Virginia, he served as state director of public welfare in Tennessee and in Virginia and founded the American Public Welfare Association in 1930. From 1935, when it was organized, until 1938, he administered the Social Security System. From 1938 to 1958, he was executive director of the Council of State Governments. During World War II, he also served as director of field operations in the Office of Price Administration. He was the first person to serve as Chairman of the Advisory Commission on Intergovernmental Relations, established by Congress in 1959.

BRUCE WALKER RETIRES AFTER LONG CAREER IN CALIFORNIA

Bruce Walker has retired from state service after an extensive career with the California Franchise Tax Board. Positions that he has held include assistant executive officer, chief counsel, operations chief, income tax chief, and compliance chief. He has also served as director of the department of veterans affairs and as member of the veterans board. A retirement dinner was held for him in Sacramento on January 20, 1983.

NESTOA CHOOSES NEW OFFICERS

The Executive Committee of the North Eastern State Tax Officials Association met in Washington, D.C. at the headquarters of the Federation of Tax Administrators on January 27, 1983. Because of the resignation of L. Joyce Hampers as Massachusetts Commissioner of Revenue and as NESTOA President, new officers were elected. The new officers are J. Basil Wisner, Maryland, President; Thomas F. Hogan, New York, Vice President; Robert Chastant, Delaware, Treasurer; and Gary Clark, Rhode Island, Secretary.

CENSUS BUREAU REPORTS ON STATE TAX COLLECTIONS

The Governments Division of the Bureau of the Census reports that state government tax revenue totaled $162.7 billion in fiscal years ending in 1982, 8.6 percent more than in the previous year. Of this amount, the largest portions were the general sales tax (31.0 percent) and the individual income tax (28.1 percent). Other taxes that accounted for more than 4 percent of the total were the corporation income tax (8.6 percent), motor fuel tax (6.4 percent), and severance taxes (4.8 percent). Motor vehicle licenses contributed 3.4 percent, public utility taxes yielded 3.0 percent, and cigarettes and tobacco products amounted to 2.4 percent.

PENNSYLVANIA COURT CLARIFIES SCOPE OF PROPERTY TAX EXEMPTION

The Pennsylvania Supreme Court has ruled that a private, nonprofit hospital was entitled to a property tax exemption, despite the fact that most of its operating expenses were covered by the fees it charged its patients. A lower court had held that since the law required an institution to be a "purely public charity" in order to qualify for an exemption, the hospital had to be supported primarily by charitable donations. The supreme court said that this was a misinterpretation of the statute. "Purely," it said, was meant to modify "public" not "charity"; and the hospital was purely public in its admissions policy and did not use the fees it collected for any prohibited purpose. (WEST ALLEGHENY HOSPITAL v. BOARD OF PROPERTY ASSESSMENT, decided December 23, 1982)

FLORIDA COURT RULES RESIDENCY REQUIREMENT FOR HOMESTEAD EXEMPTION IS UNCONSTITUTIONAL

The Florida Supreme Court has held that that state's requirement for five years' residence before a taxpayer could claim an additional property tax exemption on his home violated equal protection. This decision overturns a ruling by the Florida District Court of Appeal (reviewed in TAN, August 1982, page 93).

The provision challenged allowed homeowners who had lived in Florida continuously for five years a $25,000 exemption; other residents got only a $5,000 exemption. The court did not decide whether the statute should be subjected to strict scrutiny, for it found that it failed the "rational basis" test under the equal protection clause of the state constitution.

The court said it could find no valid reason for the establishment of two classes of bona fide permanent state residents for purposes of the exemptions. Under the recent U.S. Supreme Court case ZOBEL v. WILLIAMS (TAN, August 1982, page 94), it is not a legitimate state purpose to reward certain citizens, to the detriment of others, for their past contributions. Neither was it permissible for the state to seek to discourage immigration from other states, even if new residents do create extra expenses for services for the localities into which they move. Concluding, the court ruled that all homeowners would be entitled to the $25,000 exemption beginning in 1983; the decision was retroactive only for those who had actually challenged the statute. (OSTERNDORF v. TURNER, decided December 16, 1982)

PROGRAM ON UTILITY AND RAILROAD APPRAISAL

The thirteenth annual program on the appraisal of utilities and railroad property for ad valorem taxation will be held July 25-28, 1983, in Wichita, Kansas. The program is cosponsored by the Public Utilities and Transportation Taxation Committee of the National Tax Association/Tax Institute of America and the College of Business Administration of Wichita State University. The program will include general sessions on significant current topics, a basic utility and railroad appraisal course, and concurrent sessions for advanced participants. Information can be obtained from the Center for Management Development, Campus Box 86, Wichita State University, Wichita, Kansas 67208, (316) 689-3118.

(continued from page 14) percent of the depreciation claimed for federal purposes. This provision applies to the first two tax years ending on or after November 15, 1981. The unused depreciation can be claimed as a deduction during a five year period, beginning two years after the tax year affected. ACRS applies in full for individuals.

In December 1981, Pennsylvania provided that for 1981 and 1982 corporate taxpayers are to determine depreciation under the former federal provisions. For 1983, taxpayers will also be allowed to take half of the additional depreciation allowed by ACRS. For 1984 and thereafter, ACRS will apply in full. The unused deductions can be claimed over a four-year period beginning in 1984. ACRS applies in full for individuals.

In May 1982, Tennessee provided that taxpayers could either determine depreciation under prior rules or add to taxable income 10 percent of the depreciation claimed for federal purposes. This provision applies to tax years ending between July 15, 1982, and July 14, 1983.

In April 1982, Virginia provided that personal and corporate taxpayers could claim only 70 percent of ACRS depreciation for state purposes in the 1982 and 1983 tax years. The unused depreciation can be claimed over the following five years.

In March 1982, West Virginia required personal and corporate taxpayers to add to taxable income a percentage of the ACRS deduction, depending on the class of the asset. For five-year property, 10 percent of the deduction is added; for ten-year property, 15 percent; for fifteen-year public utility property, 25 percent; and for fifteen-year real property, 35 percent. For three-year property, no addition is required.

(File Nos. 5762, 5815), P.2d (1983).

When sale has taken place. — A sale has taken place when crab are delivered to the processor in Alaska under a previously negotiated contract. Sjong v. State, Dep't of Revenue, Sup. Ct. Op. No. 2269 (File No. 4255), 622 P.2d 967 (1981), appeal dismissed, 454 U.S. 1131, 102 S. Ct. 986, 71 L. Ed. 2d 284 (1982), decided under former AS 43.20.130.

Sec. 43.20.072. Oil and gas producers and pipelines. (a) All business income of a taxpayer engaged in the production of oil or gas from a lease or property in this state or engaged in the transportation of oil or gas by pipeline in this state shall be apportioned to this state in accordance with the Multistate Tax Compact (AS 43.19) as modified by this section.

(b) A taxpayer's business income to be apportioned under this section to the state shall be the federal taxable income of the taxpayer's consolidated business for the tax period, except that

(1) taxes based on or measured by net income that are deducted in the determination of the federal taxable income shall be added back;

(2) intangible drilling and development costs that are deducted as expenses under 26 U.S.C. 263(c) (Internal Revenue Code) in the determination of the federal taxable income shall be capitalized and depreciated as if the option to treat them as expenses under 26 U.S.C. 263(c) (Internal Revenue Code) had not been exercised;

(3) depletion deducted on the percentage depletion basis under 26 U.S.C. 613 (Internal Revenue Code) in the determination of the federal taxable income shall be recomputed and deducted on the cost depletion basis under 26 U.S.C. 612 (Internal Revenue Code) and

(4) depreciation shall be computed on the basis of 26 U.S.C. 167 (Internal Revenue Code) as that section read on June 30, 1981.

(c) A taxpayer's business income shall be apportioned to this state by multiplying the taxpayer's income determined under (b) of this section by the apportionment factor applicable to the taxpayer among the following factors:

(1) the apportionment factor of a taxpayer subject to this section but not engaged in the production of oil and gas from a lease or property in this state during the tax period is a fraction, the numerator of which is the sum of the property factor under the Multistate Tax Compact (AS 43.19) and the sales factor under (d) of this section for the taxpayer for that tax period, and the denominator of which is two;

(2) the apportionment factor of a taxpayer subject to this section but not engaged in the pipeline transportation of oil or gas in this state during the tax period is a fraction, the numerator of which is the sum of the property factor under (e) of this section and the extraction factor under (f) of this section for the taxpayer for the tax period, and the denominator of which is two;

(3) the apportionment factor of a taxpayer engaged both in the production of oil or gas from a lease or property in this state and in the pipeline transportation of oil or gas in this state during the tax period

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Introduced: 1/23/85
Referred: House Special Committee on
Oil & Gas,Resources and Finance

1 IN THE HOUSE BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 101

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An act relating to allowable depreciation methods

7 for oil and gas producers and pipelines; and provid-

8 ing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 43.20.072(b)(4) is repealed.

11 * Sec. 2. Section 1 of this Act is retroactive to January 1, 1985, and

12 applies to tax returns for tax years beginning after December 31, 1984.

13 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-

14 10.070(c).