CITE AS
33 *Energy & Min. L. Inst.* 12 (2012)

Chapter 12

Tax Issues in the Disposition of Oil & Gas Assets

Gregory V. Nelson
Paul Hastings LLP
Houston, Texas[1]

Synopsis

---

1 IRS Circular 230 Disclaimer: As required by U.S. Treasury Regulations governing tax practice, you are hereby advised that any written tax advice contained herein was not written or intended to be used (and cannot be used) by any taxpayer for the purpose of avoiding penalties that may be imposed under the Code.

§ 12.01. Purchase and Carry Transactions.

[1] — The Transaction.

A typical oil and gas purchase and carry transaction involves two or more participants. The first participant owns the oil and gas lease that the participant desires to develop. The second (and, in some cases, third) participant has cash that the participant would like to invest in (1) the purchase of a portion of the oil and gas asset from the first participant and (2) the payment of its share of development costs for the property and the payment of at least a portion of the first participant's share of the development of the property.

The first participant may be motivated to enter into the transaction to attract equity investors to the property in order to transfer the risk of ownership and the cost of development of the oil and gas assets to the second participant. The second participant is motivated by the opportunity to invest in existing oil and gas assets on which the first participant may have already completed pre-development work.

[2] —Example of Typical Transaction.

For purposes of our discussion of the tax issues involved in a typical purchase and carry transaction, the following example is instructive:

- A owns an oil and gas property valued at $100.
- B pays A $50 of cash in exchange for a 50 percent interest in A's original interest in the property.