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In Re: Aggregation of Operating Interests

Date:
July 18, 2013

LEGEND:
Taxpayer =
Sub 1 =
Sub 2 =
Company =
State 1 =
State 2 =
x =
y =
A =
B =
C =
Date 1 =
Date 2 =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =

Dear :

This letter responds to a letter, dated , from Taxpayer's representatives requesting that, pursuant to Rev. Proc. 64-23, 1964-1 C.B. 689, the Commissioner consent to invalid aggregations under § 614(c)(1) of the Internal Revenue Code, and the treatment as one property of separate contiguous operating interests included in the depletable interests of the A Mine during Year 5 through Year 7.

According to the information submitted, Taxpayer, a foreign mining company treated as a U.S. corporation under § 7874(b), is an accrual basis calendar taxpayer that files a consolidated federal income tax return on behalf of itself and its subsidiaries. Taxpayer owns x percent of Sub 1, a State 1 corporation, which in turn owns x percent of Sub 2, a State 2 corporation, which owns the subject mineral properties.

The operating mineral interests included in this ruling request are part of the A Mine. On Date 1, Sub 2 purchased all of the stock of Company, thereby becoming the owner of the A Mine and the B Mine properties. The tax basis of the assets of Company did not change because of the stock acquisition.
The A Mine consists of y operating shafts: the A shaft and the C shaft. The A Mine dates back to Year 1 and the B Mine dates back to Year 2. The B Mine has not produced since Year 3. These mines have been owned by various parties and it appears that Sub 2's tax basis in the A Mine was determined by reference (within the meaning of § 1.614-6(c)) to prior transferors' tax basis dating back to Year 4. Taxpayer represents that it is unaware of any § 614 property elections that may have been made by Company or its previous transferors. Taxpayer further represents that to the best of its knowledge, all operating mineral interests in the A Mine were treated as a single depletable property by Company prior to its acquisition by Taxpayer, as there was a single depletion computation on Company's pre-acquisition short period Year 5 federal income tax return.

The A Mine consists of multiple operating mineral interests that are operated together as a unit and have: (i) common field or operating personnel; (ii) common supply and maintenance facilities; (iii) common processing or treatment plants; and (iv) common storage facilities. These mineral interests include fee and leased patented and unpatented mining claims some of which overlap one or more other mining claims. The mineral reserves are contained in narrow latticed veins. Starting in Year 5, the A Mine has been in production and has incurred operating and development costs. Each year beginning in Year 5, additional operating mineral interests in the A Mine have been added to existing operating mineral interests as mining activity follows the mineral veins.

Due to Taxpayer's lack of understanding of U.S. federal income tax requirements and inadequate advice from its tax advisors, Taxpayer did not realize that it had the option or was required to make an election under § 1.614-3(a)(1) to aggregate contiguous separate operating mineral interests that constitute part or all of the same operating unit as one property. Therefore, Taxpayer did not elect to aggregate any of its mineral interests in the A Mine under § 1.614-3(a)(1).

However, on Taxpayer's federal income tax returns for Year 5 and Year 6 it computed depletion deductions in the aggregate for all mineral properties it owned at the A Mine, as if the original election to aggregate all operating interests had been properly made and subsequent aggregation elections for additional operating interests that were added

to the mine had been timely filed. Taxpayer represents that if it had known of the requirement to make a timely election under § 1.614-3(a)(1) on its Year 5 and Year 6 federal income tax returns, it would have done so. On Date 2, Taxpayer engaged new tax advisors to assist in the preparation of its Year 7 federal income tax return. During the preparation process, Taxpayer discovered that it should have made an election under § 1.614-3(a)(1) to aggregate its contiguous separate operating mineral interests in the A Mine on its Year 5 and Year 6 federal income tax returns.

No additional percentage depletion deductions are expected to be allowed to Taxpayer if permission to aggregate the mineral properties is granted because the mineral properties added to the A Mine had a zero tax basis.

Taxpayer also represents that its principal purpose for aggregating the separate contiguous operating mineral interests as one property is to reduce administrative burden in calculating depletion and provide for consistency in the computation of the depletion deduction. Therefore, Taxpayer now requests permission to aggregate its interests in the separate properties as provided for by § 1.614-3(a)(1).

Section 614(a) provides that for the purpose of computing the depletion allowance in the case of mines, wells, and other natural deposits, the term "property" means each separate interest owned by the taxpayer in each mineral deposit in each separate tract or parcel of land.

Section 614(c)(1) and § 1.614-3(a)(1) of the regulations state that a taxpayer who owns two or more separate operating mineral interests, which constitute part or all of an operating unit, may elect to form an aggregation of any two or more such operating mineral interests and to treat such aggregation as one property. Any operating mineral interest which the taxpayer does not elect to include within the aggregation on a timely basis shall be treated as a separate property.

Section 614(c)(3)(A) provides that an election under § 614(c)(1) shall be made, in accordance with regulations prescribed by the Secretary, not later than the time prescribed for filing the return (including extensions thereof) for the first taxable year in which any expenditure for development or operation in respect of the separate operating mineral interest is made by the taxpayer after the acquisition of the interest.

Section 614(d) provides that the term "operating mineral interest" includes only an interest in respect of which the costs of production of the mineral are required to be taken into account by the taxpayer for purposes of computing the taxable income limitation provided for in § 613 or would be so required if the mine, well, or other natural deposit were in the production stage.

Section 1.614-3(a)(1) provides that except in the case of oil and gas wells, a taxpayer who owns two or more separate operating mineral interests, which constitute part or all

of the same operating unit, may elect under § 1.614-3 to form an aggregation of all such operating mineral interests which comprise any one mine or any two or more mines and to treat such aggregation as one property. The aggregated property which results from the exercise of such election shall be considered as one property for all purposes of subtitle A of the Code. Section 1.614-3(a)(1) further provides that if a taxpayer fails to make an election under § 1.614-3 to aggregate a particular operating mineral interest (other than an interest which becomes a part of a mine with respect to which the interests have been aggregated in a prior taxable year) on or before the last day prescribed for making such an election, such interest shall be treated as if an election had been made to treat it as a separate property.

Section 1.614-3(f)(1) provides that except as provided in § 1.614-3(f)(7)(2) and (3), the election under § 614(c)(1) to treat an operating mineral interest as part of an aggregation shall be made under § 614(c)(3)(A) not later than the time prescribed by law for filing the taxpayer's income tax return (including extensions thereof) for whichever of the following taxable years is the later:

(i) The first taxable year beginning after December 31, 1957, or

(ii) The first taxable year in which any expenditure for development or operation in respect of the separate operating mineral interest is made by the taxpayer after the acquisition of such interest.

Section 1.614-3(f)(8)(i) and (ii) provide that aggregations are invalid because of the failure to make timely elections and that basic invalid aggregations are those that are initially invalid.

Rev. Proc. 64-23 sets forth guidelines to aid in determining what constitutes an "operating unit" in the case of oil and gas properties under § 1.614-2(c) and announces that under Delegation Order No. 93 dated April 27, 1964, Assistant Regional Commissioners, Appellate, Associate Chiefs of the Appellate Division and District Directors of Internal Revenue have been authorized to consent, under the provisions of §§ 1.614-2(d)(5) and 1.614-3(f), to the reforming of aggregations by a taxpayer where the taxpayer has formed invalid basic aggregations or made invalid additions to valid or invalid basic aggregations; and to consent, in the case of oil and gas wells where an invalid aggregation has been formed under § 614(b) , to the treatment by a taxpayer of all the properties included in the aggregation, which fall within a single operating unit, under the provisions of § 614(d) if so requested by the taxpayer.

Section 6 of Rev. Proc. 64-23 states:

> The authority to consent to the treatment of each operating mineral interest under subdivisions (ii) and (iii) of sections 1.614-2(d)(5) and 1.614-3(f)(8) of the regulations, relating to invalid aggregations, as other than a separate property

has been delegated to Assistant Regional Commissioners, Appellate, Associate Chiefs of the Appellate Division, and District Directors.

Under Delegation Order 93 (Rev. 8), 1982-1 C.B. 336, the authority vested in the Commissioner in § 1.614-2 (d)(5) and § 1.614-3 (f)(8) relating to invalid aggregations as other than a separate property is delegated to Chief Counsel, Regional Counsels, Regional Directors of Appeals, Chiefs and Associate Chiefs of Appeals Offices, Appeals Team Chiefs as to their respective cases, District Directors, and in other than streamlined districts, Chiefs, District Examination Divisions.

Based solely on the facts and representations submitted, consent is given to Taxpayer to aggregate all of its mineral properties held in the A Mine. The A Mine aggregation must be treated as a single property for this tax year and for all subsequent tax years, unless consent is obtained from the Commissioner to change the aggregation. Except as specifically set forth above, we express or imply no opinion concerning the federal income tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the power of attorney, we are sending copies of this letter to Taxpayer's authorized representatives. We also are sending a copy of this letter to the appropriate Industry Director, LB&I. A copy of this ruling must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,
Associate Chief Counsel
(Passthroughs and Special Industries)

Brenda M. Stewart
Senior Counsel, Branch 6
Office of Associate Chief Counsel
(Passthroughs & Special Industries)