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Date:
August 14, 2017

Re:
EIN:

EIN:
Request to aggregate nonoperating mineral interests

LEGEND

| | |
|---|---|
| Taxpayer A | = |
| Taxpayer B | = |
| Holding Company | = |
| Corporation | = |
| Date 1 | = |
| Date 2 | = |
| Date 3 | = |
| Date 4 | = |
| Date 5 | = |
| State | = |
| Year 1 | = |
| Year 2 | = |
| Year 3 | = |
| a | = |
| b | = |
| c | = |
| A | = |
| B | = |
| C | = |
| D | = |

E =

F =
G =
H =

I =

J =

K =

Dear :

This letter replies to a letter, dated Date 1, and revised by letter of Date 5, in which Taxpayer A requests permission to form aggregations of separate nonoperating mineral interests under § 614(e) of the Internal Revenue Code (Code) and § 1.614-5(d) of the Income Tax Regulations (Regulations) on behalf of itself and Taxpayer B. The request is submitted with respect to nonoperating mineral interests held in a mining properties and b oil and gas field(s), each located in the United States.

The facts and representations submitted are summarized as follows:

Taxpayer A is incorporated pursuant to the laws of State and is a wholly owned subsidiary of Holding Company, which is also incorporated pursuant to the laws of State. Taxpayer B is a wholly-owned subsidiary of Taxpayer A that was incorporated pursuant to the laws of State. Together, Holding Company, Taxpayer A, and Taxpayer B are an affiliated group of corporations that file a consolidated U.S. federal income tax return with Holding Company serving as the common parent. Holding Company is wholly-owned by Corporation.

Corporation, along with its subsidiaries identified in this letter and its non-U.S. subsidiaries, is an international mineral resource and investment company that acquires mineral, oil, and natural gas royalties and other nonoperating mineral interests worldwide. Corporation does not explore, develop, or operate on any of the properties in which it holds interests, relying instead on passive income streams, predominantly royalties on mineral interests, as the basis of its income. Corporation prepares its financial statements based on International Financial Reporting Standards as issued by the International Accounting Standards Board.

The mineral interests that are the subject of the request are located in the following areas:

1. A
2. B
3. C
4. D
5. E
6. F
7. G
8. H
9. I

For U.S. federal income tax purposes, all of these mineral interests are owned directly by Taxpayer A, with the exception of the interests at the C project, which are owned directly by Taxpayer B.

With the exception of the I interests, the nonoperating mineral interests at the properties listed in this letter consist of gold and other mineral royalty interests including gross royalties and net smelter return royalty interests. While each of these properties containing gold and other mineral royalty interests was acquired by Taxpayer A or Taxpayer B at different times between Year 1 and Year 2, each of the properties are nonproducing. Taxpayer A and Taxpayer B have not claimed cost depletion deductions with respect to any of the nonproducing properties. Taxpayer A does note that D project is currently producing, however, the royalty interests acquired by Taxpayer A do not provide any royalties on gold production until Year 3 and so Taxpayer A has not claimed any depletion allowance on this property. Taxpayer A has claimed percentage depletion with respect to advanced minimum royalties payments received from the operator of the A properties, but otherwise Taxpayer A and Taxpayer B have not claimed percentage depletion deductions with respect to any of the nonproducing properties. Furthermore, the claimed percentage depletion does not exceed Taxpayer A's adjusted tax basis in the interests located at the A mine, and Taxpayer A's depletion deductions would have remained unchanged if they had been calculated using the cost depletion method because the annual minimum royalties were not payments for production.

The I interests were acquired on Date 2. These interests consist of nonoperating oil and gas production royalty interests including overriding royalty interests and fee royalties. A fee royalty is a payment for production paid to a lessor, in this instance Taxpayer A. Along with the fee royalties and overriding royalty interests Taxpayer A received when it acquired the I interests, Taxpayer A also received a possibility of reverter for all of the operating mineral interests for which it received a fee royalty, with two exceptions. Taxpayer A received one I interest that is not currently subject to a lease, J, and the lease associated with K recently expired. Taxpayer A does not at this time request permission to aggregate the two unleased I interests with the other acquired I interests.

Each production royalty interest held by Taxpayer A and Taxpayer B will be referred to hereinafter as a "royalty interest." These royalty interests afford Taxpayer A and Taxpayer B the right to mineral royalties and do not bear the costs of exploration, development, or production on the properties. Each of the properties at which the royalty interests are located are operated by other unrelated companies. Furthermore, the interests are located in tracts of land that are either contiguous, touching at one point (checker-board pattern of ownership), or reasonably close in proximity to each other. Taxpayer A submitted tract descriptions and a map or maps for each property that shows the total area circumscribed by each aggregation of nonoperating interests requested by Taxpayer A and Taxpayer B. Taxpayer A and Taxpayer B consider these interests to be nonoperating mineral interests and have represented that these interests are nonoperating mineral interests.

The request seeks the aggregation of the nonoperating mineral interests held at each of the c properties into c individual properties, each treated as one property for U.S. federal income tax purposes, in order to enable Taxpayer A and Taxpayer B to compute their cost depletion deduction in accordance with §§ 611 and 612 of the Code and § 1.611-2 of the Regulations. Aggregation of the royalty interests at the c properties is necessary to compute cost depletion because reserve information is not available to Taxpayer A and Taxpayer B on a separate property-by-property basis. In order to determine the appropriate reserves for each property, Taxpayer A and Taxpayer B will generally be required to rely on publicly available information and life of mine reports provided by the properties' operators. Taxpayer A and Taxpayer B, and their parent, Corporation, will rely on the same reserve information to compute book cost depletion in the aggregate for each mine in the preparation of Corporation's financial statements and regulatory filings. Granting permission to aggregate nonoperating mineral interests at each of the properties will reduce administrative burden in calculating depletion and allow Taxpayer A and Taxpayer B to implement consistent treatment for financial accounting and federal income tax purposes.

Taxpayer A and Taxpayer B represent that a principal purpose of submitting the request for the aggregation of royalty interests held at each property is not the avoidance of tax. Taxpayer A and Taxpayer B make this representation for two reasons. First, the interests subject to this ruling request do not bear the costs of exploration, development, or production at the properties. Therefore, it is highly unlikely that the percentage depletion deduction for each interest would be subject to the taxable income limitation contained in § 1.613-5 of the Regulations, as only general and administrative costs plus any severance and ad valorem taxes will be allocated to each interest for the purpose of computing the taxable income limitation. Aggregating the interests at each property is not expected to alter this result, so that no additional percentage depletion deductions are expected to be allowed if permission to aggregate is granted. Second, aggregating the interests at each property will not alter the total amount of cost depletion deductions allowed at each property over its life, as the total cost depletion deductions allowed for a property cannot exceed the depletable tax basis

allocated to the interests at that property. Accordingly, no cost depletion deductions in excess of those to which Taxpayer A and Taxpayer B are entitled are expected at each property.

The following ruling is requested:

That, pursuant to § 1.614-5(d) of the Regulations, Taxpayer A's and Taxpayer B's application to aggregate the separate nonoperating mineral interests at the c listed properties such that each of the c listed properties is separately treated as one property is granted.

Law and Analysis

In the case of mines, wells, and other natural deposits, § 614(a) of the Code and § 1.614-1(a)(1) of the Regulations define the term "property" to mean each separate interest owned by the taxpayer in each mineral deposit in each separate tract or parcel of land.

Section 1.614-1(a)(2) of the Regulations defines the term "interest" as an economic interest in a mineral deposit. It includes working interests or operating interests, royalties, overriding royalties, net profits interests, and, to the extent not treated as loans under § 636 of the Code, production payments.

Section 614(e)(1) of the Code provides that if a taxpayer owns two or more separate nonoperating mineral interests in a single tract or parcel of land or in two or more adjacent tracts or parcels of land, the Secretary shall, on a showing by the taxpayer that a principal purpose of forming the aggregation is not the avoidance of tax, permit the taxpayer to treat all such interests as one property for all subsequent taxable years unless the Secretary consents to a different treatment.

Section 614(e)(2) of the Code and § 1.614-5(g) of the Regulations define the term "nonoperating mineral interests" to include only interests described in § 614(a) that are not operating mineral interests within the meaning of § 1.614-2.

Section 1.614-2(b) of the Regulations defines the term "operating mineral interest" to mean a separate mineral interest as described in § 614 of the Code, in respect of which the costs of production are required to be taken into account by the taxpayer for purposes of computing the limitation of 50 percent of taxable income from the property in determining the deduction for percentage depletion under § 613, or such costs would be so required to be taken into account if the mine, well, or other natural deposit were in the production stage. The term does not include royalty interests or similar interests, such as production payments or net profits interests.

Section 1.614-5(d) of the Regulations provides that upon proper showing to the Commissioner, a taxpayer who owns two or more separate nonoperating mineral

interests in a single tract or parcel of land, or in two or more adjacent tracts or parcels of land, shall be permitted, under § 614(e) of the Code, to form an aggregation of all such interests in each separate kind of mineral deposit and treat such aggregation as one property. Permission shall be granted by the Commissioner only if the taxpayer establishes that a principal purpose in forming the aggregation is not the avoidance of tax. The fact that the aggregation of nonoperating mineral interests will result in a substantial reduction in tax is evidence that the avoidance of tax is a principal purpose of the taxpayer. An aggregation formed under § 1.614-5(d) shall be considered as one property for all purposes of the Internal Revenue Code. In no event may nonoperating interests in tracts or parcels of land that are not adjacent be aggregated and treated as one property. The term “two or more adjacent tracts or parcels of land” means tracts or parcels of land that are in reasonably close proximity to each other depending on the facts and circumstances of each case. Adjacent tracts or parcels of land do not necessarily have any common boundaries, and may be separated by intervening mineral rights.

Section 1.614-5(e)(1) of the Regulations provides that an application for permission to aggregate separate nonoperating interests under § 614(e) of the Code and § 1.614-5(d) must be made in writing to the Commissioner and must be filed within 90 days after the beginning of the first taxable year beginning after December 31, 1957, for which aggregation is desired or within 90 days after the acquisition of one of the nonoperating mineral interests that is to be included in the aggregation, whichever is later.

Section 1.614-5(e)(4) of the Regulations provides that the application for permission to aggregate nonoperating mineral interests under § 614(e) of the Code and § 1.614-5(d) shall include a complete statement of the facts upon which the taxpayer relies to show that the avoidance of tax is not a principal purpose of forming the aggregation. Such application shall also include a description of the nonoperating mineral interests within the tract or tracts of land involved. A general description, accompanied by maps appropriately marked, which accurately circumscribes the scope of the aggregation and shows that the taxpayer is aggregating all the nonoperating mineral interests in a particular kind of mineral deposit within the tract or tracts of land involved will be sufficient. If the Commissioner grants permission, a copy of the letter granting such permission shall be attached to the taxpayer's return for the first taxable year for which such permission applies. If the taxpayer has already filed such return, a copy of the letter of permission shall be filed with the district director for the district in which such return was filed and shall be accompanied by an amended return or returns if necessary or, if appropriate, a claim for credit or refund.

Section 1.614-5(e)(5) of the Regulations provides that the election to aggregate separate nonoperating mineral interests under § 614(e) of the Code and § 1.614-5(d) is binding upon the taxpayer for the first taxable year for which made and for all subsequent taxable years unless consent to make a change is obtained from the

Commissioner.

Therefore, to obtain permission, the taxpayer must:

1) Apply for permission within 90 days after the beginning of the first taxable year for which aggregation is desired, or within 90 days after the acquisition of one of the properties to be included in the aggregation (section 1.614-5(e)(1)).
2) Provide maps, descriptions of the nonoperating interests, and a complete statement of the facts (section 1.614-5(e)(4)).
3) Establish that the principal purpose for forming the aggregation is not tax avoidance. A substantial reduction in taxes is evidence that avoidance of taxes is the principal purpose (section 1.614-5(d) and section 1.614-5(e)).

Taxpayer A represents that the l interests were acquired on Date 2. Therefore, Taxpayer A has until Date 3 to submit a timely request to aggregate the l interests. With respect to the interests located at the other a properties, pursuant to § 1.614-5(e)(1) of the Regulations, Taxpayer A and Taxpayer B should have until Date 4 to submit a timely application to aggregate the remaining a properties.

Taxpayer A represents that to the best of Taxpayers' and Taxpayers' representatives' knowledge that the interests owned at each of the c properties are "nonoperating mineral interests" with the exception of the two unleased l interests as that term is defined in § 1.614-5(g) of the Regulations, and that the interests are interests that do not bear the costs of exploration, development, or production. Taxpayer A also represents that to the best of Taxpayers' and Taxpayers' representatives' knowledge the interests at each property are owned in two or more tracts or parcels of land that are "adjacent" or "in reasonably close proximity to each other" as provided in § 1.614-5(d) of the Regulations. Additionally, Taxpayer A represents that to the best of Taxpayers' and Taxpayers' representatives' knowledge the maps for each property included with the ruling request demonstrate that the nonoperating interests at each property are in reasonably close proximity to each other, as these interests are either contiguous, touch at a corner, or are separated by intervening mineral rights but included in a single operating mine.

Lastly, Taxpayer A and Taxpayer B represents that to the best of Taxpayers' and Taxpayers' representatives' knowledge the principal purpose of forming the requested aggregation at each property is not tax avoidance. The purpose of forming the requested aggregation is to reduce administrative burden in calculating depletion and allow Taxpayer A and Taxpayer B to implement consistent treatment for financial accounting and federal income tax purposes

Based on the representations made and consideration of the descriptions and maps submitted, we conclude that the requirements of § 1.614-5 of the Regulations have been met. Based solely on the facts and representations submitted, we grant consent for Taxpayers to aggregate the separate nonoperating mineral interests at the c

properties, A, B, C, D, E, F, G, H, and I, such that each of the c properties is separately treated as one property for U.S. federal income tax purposes.

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. Specifically, we express or imply no opinion concerning Taxpayers' calculation of depletion or whether Taxpayers' interests in the properties are economic interests. This ruling is conditioned on each royalty interest qualifying as an economic interest under § 611 of the Code before the aggregation. General descriptions of the nonoperating interests accompanied by maps are to be on file with the books and other records that are necessary for examination by the Service.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer A 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 Taxpayers' 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,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs & Special Industries)