Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-109017-20

Date:
September 30, 2020

In Re:

LEGEND:

Taxpayer	=
Partnership	=
Date 1	=
State	=
County	=
A	=
B	=
C	=
D	=
a	=
b	=
c	=
d	=
e	=
f	=
Director	=

Dear :

This letter replies to your request, dated Date 1, in which Taxpayer seeks permission to aggregate certain aggregated net profits interest under § 614(e) of the Internal Revenue Code and § 1.614-5(d) of the Income Tax Regulations.

Taxpayer represents the facts as follows:

Taxpayer, a calendar year, accrual basis taxpayer, owns producing and nonproducing mineral, royalty, overriding royalty, and net profits interests in various properties located in approximately a counties and parishes in b states. A significant portion of Taxpayer's assets consists of net profits overriding royalty interests that burden properties owned by Partnership, which is owned (directly and indirectly) by Taxpayer's general partner. Taxpayer receives monthly payments from Partnership on the net profits actually realized by Partnership from the properties burdened by Taxpayer's net profits overriding royalty interests.

Taxpayer owns c net profits overriding royalty interests, d of which, A, B, C, and D, are relevant to this request. A, the largest of the net profits overriding royalty interests, burdens properties located in various properties throughout the United States. B, the second largest interest, is an aggregate net profits overriding royalty interest that burdens wells located in various regions of the United States. C, the third largest interest, is an aggregate net profits overriding royalty interest that burdens wells located in various regions of the United States. Lastly, D, the smallest interest, is an aggregate net profits overriding royalty interest that burdens wells located in various regions of the United States. Together, B, C, and D are collectively known as the "Other Burdened Properties." Taxpayer represents that each A, B, C, and D is a single economic interest that constitutes a single property for purposes of § 614.

Taxpayer represents that several of the properties burdened by A are also burdened by either by B or C. With respect to D, Taxpayer represents that the closest D burdened property is located within approximately f miles of an A burdened property in County, State and producing from the same underlying formation. Thus, Taxpayer represents that substantially all of the B, C, and D burdened properties either directly overlap with or are adjacent to or in reasonably close proximity to an A burdened property.

Both the A and the Other Burdened Properties historically have generated positive net profits. Taxpayer expects these properties will continue to generate positive net profits in the future. However, relative to A, the remaining Other Burdened Properties' net profits overriding royalty interests produce less than e percent of combined net operating income for each of the net profits overriding royalty interests. Accordingly, Taxpayer desires to aggregate A and the Other Burdened Properties to reduce the time and expense required to separately account for the d aggregate net profits interests at issue. Taxpayer represents that aggregation of the interest subject to this request is not for the purpose of avoidance of tax and that the aggregation will not result in a substantial reduction of tax liability.

The aggregation of A and the Other Burdened Properties would be accomplished by amending the terms of the conveyance creating A such that, following the amendment, A would burden both the properties currently burdened by A and the Other Burdened Properties. As a result, in determining the amount payable with respect to A, the revenues from the properties currently burdened by A and the Other Burdened

Properties would be offset by the total expenses of the properties currently burdened by A and the Other Burdened Properties. Thus, following the aggregation, there would be a single computation for all of the properties currently burdened by A and the Other Burdened Properties.

Law and Analysis

In the case of mines, wells, and other natural deposits, § 614(a) and § 1.614-1(a)(1) 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) 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, production payments.

Section 614(e)(1) 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) and § 1.614-5(g) 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) defines the term "operating mineral interest" to mean a separate mineral interest as described in § 614, 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) 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), 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) provides that an application for permission to aggregate separate nonoperating interests under § 614(e) 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) provides that the application for permission to aggregate nonoperating mineral interests under § 614(e) 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.

Under § 614(e) and § 1.614-5(d), a taxpayer that owns an aggregate nonoperating mineral interest that qualifies as a single economic interest under § 614(a) and § 1.614-1(a)(2) may request permission to aggregate the aggregate nonoperating mineral interest with a separate nonoperating mineral interest that burdens a property that is adjacent or in reasonable proximity to any one of the properties burdened by the aggregate nonoperating mineral interest.

Section 1.614-5(e)(5) provides that the election to aggregate separate nonoperating mineral interests under § 614(e) 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 submitted this request on Date 1, which date is within 90 days after the beginning of the first taxable year for which this aggregation is desired.

Taxpayer represents that the interests owned at each of the properties are "nonoperating mineral interests" (e.g. net profits overriding royalty interests) as the term is defined in § 1.614-5(g). Taxpayer represents that each of A, B, C, and D are single economic interests that each constitute a single property for purposes of § 614. Taxpayer also represents that substantially all of the properties burdened by the Other Burdened Properties are in the same tracts or parcels of land as or in reasonably close proximity to certain properties burdened by A. Taxpayer submitted tract descriptions and a map or maps for each property that shows the total area circumscribed by the aggregation of nonoperating mineral interests requested by Taxpayer.

Finally, Taxpayer represents that the principal purpose of forming the requested aggregation is not tax avoidance. Taxpayer represents that the purpose of the proposed aggregation is to eliminate the hardship and expense of separately accounting for the separate aggregate net profits interests, and that the proposed aggregation will not result in a substantial reduction in tax.

Based on the representations made and consideration of the descriptions and maps submitted, we conclude that the requirements of § 1.614-5 have been met. Based solely on the facts and representations submitted, we grant consent for Taxpayer to aggregate A with the Other Burdened Properties such that the nonoperating mineral interests located at A, B, C, and D are treated as a single property for U.S. federal income tax purposes. The aggregate net profits interest resulting from the aggregation of A, B, C, and D must be treated as a single property for purposes of § 614 for the taxable year beginning January 1, 2020, 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. Specifically, we express or imply no opinion concerning Taxpayer's calculation of depletion or whether Taxpayer's interests in the properties are economic interests. This ruling is conditioned on each royalty interest

qualifying as an economic interest under § 611 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 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.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides it may not be used or cited as precedent. In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives. We are also sending a copy of this letter to the Director. Pursuant to § 1.614-5(e)(4), a copy of this letter must be attached to the taxpayer's federal income tax return for the first taxable year for which such permission applies. If Taxpayer has already filed such return, a copy of the letter of permission must be filed with the Director and must be accompanied by an amended return or returns if necessary or, if appropriate, a claim for credit or refund.

This letter ruling is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to Taxpayer.

Sincerely,

Patrick S. Kirwan
Branch Chief, Branch 6
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

cc: