Internal Revenue Service

Number: **202407003**
Release Date: 2/16/2024

Index Number: 614.04-00, 9100.00-00

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:B6
PLR-111072-23
PLR-111073-23

In Re:

Date:
November 15, 2023

LEGEND

Taxpayer =
Corporation 1=
Corporation 2=
Corporation 3=
State =
Location =
Lease 1 =
Lease 2 =
Lease 3 =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
Date 9 =
Date 10 =
Date 11 =
Date 12 =

Date 13 =
Date 14 =
Year 1 =
Year 2 =
a =
b =
c =
d =
e =
f =
A =
B =

Dear :

This letter replies to the Taxpayer's ruling request, dated Date 12. The Taxpayer has requested the following rulings:

(1) An extension of time under § 301.9100-3 of the Procedure and Administration Regulations to submit an application for permission to aggregate separate nonoperating mineral interests under § 614(e) of the Internal Revenue Code and § 1.614-5(d) of the Income Tax Regulations.[1]

(2) In the event that the relief requested in (1) is granted, permission under § 614(e) and § 1.614-5(d) to aggregate nonoperating mineral interests pursuant to the followings Leases:

(a) Lease 1 and Lease 2, effective Date 1; and
(b) Lease 1, Lease 2, and Lease 3, effective Date 2.

The request is submitted in respect of nonoperating mineral interests held in Location.

FACTUAL BACKGROUND

Taxpayer represents the following facts:

Taxpayer is organized as a limited liability company, treated as a partnership, and incorporated pursuant to the laws of State.

Taxpayer is organized primarily for the object and purpose of making investments in assets of all types. Taxpayer is a calendar year taxpayer, utilizes

[1] Unless otherwise specified, all "section" references will be to the Internal Revenue Code, the Income Tax Regulations, or the Procedure and Administration Regulations.

the accrual method of accounting and prepares its financial statements using the U.S. Generally Accepted Accounting Principles.

On Date 3, Taxpayer entered into a royalty agreement with Corporation 1, a corporation formed under the laws of Location. Taxpayer paid consideration of a to Corporation 1 in exchange for future royalties on certain lands based on the sale of A that has been converted from the B extracted from lands in the leases covered by the royalty agreement. Corporation 1 acted as the developer, producer, and marketer of B. Shortly after Date 3, Taxpayer inquired with Corporation 1 which leases were actively producing B. On Date 13, Corporation 1 notified Taxpayer that the only lease actively producing B is Lease 1. On Date 14, Corporation 3 confirmed that Lease 1 is the only lease producing B.

On Date 4, Taxpayer and Corporation 1 amended the royalty agreement, whereby Taxpayer paid Corporation 1 an additional b in exchange for an increased royalty rate. The total consideration Taxpayer paid to Corporation 1 was c.

On Date 5, Corporation 1 and Corporation 2 amalgamated to form Corporation 3. Corporation 3 became the successor royalty grantor of the royalty agreement with Taxpayer with ultimate responsibility for economic performance to Taxpayer.

On Date 6, Corporation 3 indicated to Taxpayer that Lease 3 began producing B on Date 7. On Date 8, Corporation 3 indicated to Taxpayer that Lease 2 has been producing B since Date 9.

For U.S. federal income tax purposes, the properties covered in Lease 1, Lease 2, and Lease 3, consist of mineral royalty interests, and each property has both currently producing and currently nonproducing portions. All the Leases that Taxpayer seeks to aggregate in this request are located in Location and classified by Corporation 3 as producing lands, for which Corporation 3 actively extracts B.

Taxpayer is seeking permission to aggregate Lease 1 and Lease 2 effective on Date 1 because both Lease 1 and Lease 2 were producing B during taxable Year 1. Taxpayer was not aware that it was required to submit an application for permission to aggregate separate nonoperating mineral interests in Lease 1 and Lease 2 until Date 8. Taxpayer is also seeking permission to aggregate Lease 3 with Lease 1 and Lease 2 effective Date 2 because Lease 3 began producing B during taxable Year 2. Taxpayer was not aware that it was required to submit an application for permission to aggregate separate nonoperating mineral interests in Lease 1, Lease 2, and Lease 3 until Date 6. Taxpayer acknowledges that its aggregation requests are filed after the deadline set forth in § 1.614-5(e), and as such, Taxpayer is requesting an extension under § 301.9100-3.

Taxpayer provided a map showing that the lands included in Lease 1, Lease 2, and Lease 3 are contiguous.

Taxpayer notes that each of the properties is currently producing B or is expected to be producing B in the near future on at least some portion of the property; however, the royalty interests acquired by Taxpayer do not provide any royalties on production. Taxpayer has claimed cost depletion in respect of the royalty payments received from Corporation 3 and has not claimed percentage depletion deductions in respect of any properties.

These requests seek the aggregation of the nonoperating mineral interests held at each of the properties, each treated as one property for U.S. federal income tax purposes, to enable Taxpayer to compute its cost depletion deduction in accordance with §§ 611 and 612 and § 1.611-2. Aggregation of the royalty interests at the properties is necessary to compute cost depletion because reserve information is not available to Taxpayer on a separate property-by-property basis. The adjusted basis for the aggregated property that will be used to calculate Taxpayer's cost depletion will be the cost allocated to the leases with current production. Taxpayer's combined adjusted basis in Lease 1 and Lease 2 is equal to d, the allocated portion of consideration paid to Corporation 1. Taxpayer's adjusted basis in Lease 3 is equal to e, the allocated portion of consideration paid to Corporation 1. Taxpayer's combined adjusted basis in Lease 1, Lease 2, and Lease 3 is equal to f. Taxpayer represents that granting permission to aggregate nonoperating mineral interests at each of the properties would reduce Taxpayer's administrative burden in calculating depletion and would allow Taxpayer to implement consistent treatment for financial accounting and U.S. federal income tax purposes.

Taxpayer represents that tax avoidance is not the principal purpose of its aggregation requests and provides that the two separate requested aggregations do not reduce Taxpayer's federal tax liability. Taxpayer further provides that the sole reason in requesting the aggregation is to ease Taxpayer's administrative burden of calculating the depletion deduction for federal income tax purposes.

RULINGS REQUESTED

1. Whether Taxpayer is entitled to an extension of time, under § 301.9100-3 to submit an application for permission to aggregate separate nonoperating mineral interests under § 614(e) and § 1.614-5(d).

2. If the ruling requested in (1) is granted, whether Taxpayer is entitled under § 614(e) and § 1.614-5(d) to aggregate nonoperating mineral interests pursuant to the followings Leases:

    (a) Lease 1 and Lease 2, effective Date 1; and

(b) Lease 1, Lease 2, and Lease 3, effective Date 2.

LAW AND ANALYSIS

1. Ruling #1: Request for Extension of Time under § 301.9100-3

Under § 614(e) and § 1.614-5(d), a taxpayer that 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 may request permission to aggregate all the interests and treat them as one property.

Section 1.614-5(e) 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.

Under § 301.9100-1(c), the Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time under § 301.9100-1(a) to make a regulatory election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Here, based on the Taxpayer's representations, Taxpayer was not timely aware of the need to submit an aggregation request for Lease 1 and Lease 2, effective Date 1; or an aggregation request for Lease 1, Lease 2, and Lease 3, effective Date 2. Under § 1.614-5(e), the deadline to file an aggregation request for Lease 1 and Lease 2 was on Date 10. However, Taxpayer did not learn of the need to submit an aggregation request until Date 8, when Corporation 3 notified Taxpayer that Lease 2 has been producing B since Date 9. Date 8 was after Date 10. Under § 1.614-5(e), the deadline to file an aggregation request for Lease 3 with Lease 1 and Lease 2 was on Date 11.

However, Taxpayer did not learn of the need to submit an aggregation request until Date 6, when Corporation 3 notified Taxpayer that Lease 3 began producing B on Date 7. Date 6 was after Date 11.

Based solely on the information submitted and the representations made, we conclude that Taxpayer acted reasonably and in good faith and that the relief does not prejudice the interests of the Government, as the aggregation request does not provide a tax benefit to the Taxpayer. Therefore, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Taxpayer is granted an extension of time to submit an application for permission to aggregate separate nonoperating mineral interests under § 614(e) and § 1.614-5(d).

We consider Taxpayer's ruling request, dated Date 12, to be a timely submitted application for permission to aggregate nonoperating mineral interests.

2. Ruling #2: Aggregation Requests

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 of 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) 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 interest 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 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 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) 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 the request is made and for all subsequent taxable years unless consent to make a change is obtained from the Commissioner.

Taxpayer has represented that it acquired multiple royalty interests through Leases 1, 2, and 3. Taxpayer also represents that the interests at each property are owned in two or more tracts of parcels of land that are “adjacent” or “in reasonably close proximity to each other” as provided in § 1.614-5(d). Additionally, Taxpayer represents that the maps for each property included in 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.

Finally, Taxpayer represents that 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 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 § 614(e) and § 1.614-5 have been met. Based solely on the facts and representations submitted, we grant consent for Taxpayer to:

(a) Aggregate the separate nonoperating mineral interests in Lease 1 and Lease 2, effective Date 1, such that each of the properties is treated as one property for U.S. federal income tax purposes. The election applies for Taxpayer's taxable year ending after Date 1 and all subsequent taxable years unless Taxpayer obtains the Commissioner's consent to make a change.

(b) Aggregate the separate nonoperating mineral interests in Lease 1, Lease 2, and Lease 3, effective Date 2, such that each of the properties is treated as one property for U.S. federal income tax purposes. The election applies for Taxpayer's taxable year ending after Date 2 and all subsequent taxable years unless Taxpayer obtains the Commissioner's consent to make a change.

CONCLUSION

Based on the foregoing, we conclude that:

(1) Taxpayer is granted an extension of time to submit an application for permission to aggregate separate nonoperating mineral interests under § 614(e) and § 1.614-5(d).

(2) Taxpayer is granted consent to:

(a) Aggregate the separate nonoperating mineral interests in Lease 1 and Lease 2, effective Date 1, such that each of the properties is treated as one property for U.S. federal income tax purposes. The election applies for Taxpayer's taxable year ending after Date 1 and all subsequent taxable years unless Taxpayer obtains the Commissioner's consent to make a change.

(b) Aggregate the separate nonoperating mineral interests in Lease 1, Lease 2, and Lease 3, effective Date 2, such that each of the properties is treated as one property for U.S. federal income tax purposes. The election applies for Taxpayer's taxable year ending after Date 2 and all subsequent taxable years unless Taxpayer obtains the Commissioner's consent to make a change.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal income tax consequences of the above-described facts under any other provision of the Code or regulations. Specifically, we neither express nor imply any 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 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 directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by penalty of perjury statements 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 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 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,

Maggie M. Stehn
Senior Counsel, Branch 6
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:
Copy for § 6110 purposes

cc: