Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

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Date:
September 03, 2009

LEGEND:

Taxpayer = (EIN:)
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Mines =

Dear :

This letter responds to a letter, dated , from Taxpayer's authorized representative requesting the following rulings:

(1) An extension of time under § 301.9100 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, and

(2) In the event that relief is granted under § 301.9100, permission under § 614(e) and § 1.614-5(d) to aggregate on a mine-by-mine basis the royalty interests owned by Taxpayer in the Mines, effective for Taxpayer's taxable year ending Date 1.

According to the information submitted, Taxpayer acquired royalty interests in the Mines on or about Date 2. Based on models that were used to describe the Mines

during negotiations for the acquisition of the Mines, Taxpayer believed that it was acquiring a single royalty interest in each of the Mines. On Date 3, Taxpayer was notified by an accounting firm retained to provide compliance services that Taxpayer had acquired multiple royalty interests in each of the Mines. Each of the royalty interests in a mine is adjacent to the other royalty interests in that mine within the meaning of § 1.614-5(d). Taxpayer has submitted a topographical map or maps for each of the Mines that show the total area controlled by each of the Mines and each of the separate tracts or parcels of land in which Taxpayer owns a royalty interest.

Taxpayer represents that except in the case of one of the Mines, it does not have access to the reserve information necessary to compute the cost depletion deduction separately for each royalty interest. Therefore, Taxpayer seeks permission to aggregate its royalty interests in each of these mines into single royalty interests in order to compute depletion on an aggregate mine-by-mine basis. Taxpayer also requests permission to aggregate and treat as one property its royalty interests in the mine for which it does have reserve information for each royalty so that Taxpayer can compute cost depletion for all of the Mines in a consistent manner.

Because Taxpayer was not aware until Date 3, that that it had acquired multiple royalties in each of the mines, Taxpayer was not aware of the necessity to submit an application for permission to aggregate separate nonoperating mineral interests by Date 4 if it wished to aggregate the royalty interests on a mine-by-mine basis. Consequently, Taxpayer failed to file timely an application for permission to aggregate separate nonoperating mineral interests as required by § 1.614-5(e).

Taxpayer represents that a principal purpose of the aggregation of its royalty interests in the Mines is not the avoidance of tax. Taxpayer also represents that it does not expect additional percentage depletion deductions to be allowed if permission to aggregate is granted. In addition, Taxpayer represents that aggregating the royalty interests on a mine-by-mine basis will not alter the total amount of cost depletion deductions allowed at each mine over its life.

Ruling #1:

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

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.

Based solely on the information submitted and the representations made, 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 letter, dated Date 5, to be a timely submitted application for permission to aggregate on a mine-by-mine basis Taxpayer's royalty interests in the Mines.

Ruling #2:

Taxpayer requests permission under § 614(e) and § 1.614-5(d) to aggregate on a mine-by-mine basis the royalty interests owned by Taxpayer in the Mines, effective for Taxpayer's taxable year ending Date 1.

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, royalty interests, overriding royalties, net profits interests, and, to the extent not treated as loans under § 636, production payments.

Section 614(e)(2) and § 1.614-5(g) define the term “nonoperating mineral interests” to include only interests that are not operating mineral interests.

Section 1.614-2(b) defines the term “operating mineral interest” to mean a separate mineral interest 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 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 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)(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.

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.

Taxpayer has represented that it acquired multiple royalty interests in the Mines. Taxpayer also has submitted descriptions and maps indicating that each of the royalty interests in a mine is adjacent to the other royalty interests in that mine within the meaning of § 1.614-5(d). Moreover, Taxpayer has represented that the avoidance of tax is not a principal purpose of forming the aggregation within each of the Mines. Accordingly, Taxpayer is granted permission to aggregate on a mine-by-mine basis Taxpayer's royalty interests in the Mines. Each aggregation is considered one property for all purposes of the Code. The election applies for Taxpayer's taxable year ending Date 1 and all subsequent taxable years unless Taxpayer obtains the Commissioner's consent to make a change.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter under any provision of the Code and the Regulations thereunder. Specifically, we express or imply no opinion concerning the reserve information Taxpayer uses to compute cost depletion, or whether Taxpayer's interests in the Mines are economic interests.

This ruling is conditioned on each royalty interest in the Mines 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 the taxpayer and accompanied by a penalty of perjury

statement executed by the 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.

A copy of this ruling should be attached to your tax return filed for the year in which the transaction covered by this ruling is consummated. A copy is enclosed for this purpose.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that 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 ruling letter is being sent to your authorized representatives.

Sincerely,

Curt G. Wilson
Deputy Associate Chief Counsel
(Passthroughs and Special Industries)