

§ 1.614-5

26 CFR Ch. I (4-1-04 Edition)

section 614(b) with respect to a property within the time prescribed for making such an election, then the taxpayer shall be deemed to have treated such property under this section. In such case, the manner in which such property is treated in filing the taxpayer's income tax return for the first taxable year for which the treatment of such property is effective under paragraph (d) of this section shall establish the treatment which must be consistently followed with respect to such property for subsequent taxable years. However, if the income tax return for such first taxable year is filed prior to May 1, 1961, then the taxpayer may adopt the treatment provided for under this section with respect to the property by filing a statement at any time on or before May 1, 1961, with the district director for the district in which the taxpayer's income tax return was filed for the first taxable year for which the treatment of such property is effective under paragraph (d) of this section. Such statement shall set forth the first taxable year for which the treatment of the property under this section is effective, shall revoke any previous elections made with respect to such property under section 614(b), shall state the manner in which such property was treated for taxable years subject to the Internal Revenue Code of 1939, shall state the manner in which such property is to be treated under this section, and shall be accompanied by an amended return or returns if necessary.

(f) *Certain treatment under this section precludes election to aggregate under section 614(b) with respect to the same operating unit.* If the taxpayer's treatment of any properties that are included within an operating unit (as defined in paragraph (c) of § 1.614-2) under section 614(d) and this section would constitute an aggregation under section 614(b) and if such taxpayer elects, or has elected, to form an aggregation within the same operating unit under section 614(b) for any taxable year for which the treatment under section 614(d) is effective, then the election made under section 614(b) shall not apply for any such taxable year.

[T.D. 6524, 26 FR 157, Jan. 10, 1961, as amended by T.D. 6859, 30 FR 13700, Oct. 28, 1965]

§ 1.614-5 Special rules as to aggregating nonoperating mineral interests.

(a) *Aggregating nonoperating mineral interests for taxable years beginning before January 1, 1958.* 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 contiguous tracts or parcels of land, shall be permitted to aggregate all such interests in each separate kind of mineral deposit and treat them as one property. Permission will be granted by the Commissioner only if the taxpayer establishes that he will sustain an undue hardship if such nonoperating mineral interests are not treated as one property. Such hardship may exist, for example, if it is impossible for the taxpayer to determine the boundaries, source, or costs of the separate interests, or if a taxpayer who owns a single royalty interest, production payment, or net profits interest cannot determine the separate deposits from which his payments will be derived. In no event shall undue hardship be deemed to exist solely by reason of tax disadvantage. The treatment of such interests as one property shall be applicable for all purposes of subtitle A of the Internal Revenue Code of 1954. In no event may nonoperating mineral interests in tracts or parcels of land which are not contiguous be treated as one property. The term *two or more contiguous tracts or parcels of land* means tracts or parcels of land which have common boundaries. Common boundaries include survey lines, public roads, or similar easements for the use of land without the existence of an intervening mineral right between the tracts or parcels of land. Tracts or parcels of land which touch only at a common corner are not contiguous. For the definition of *nonoperating mineral interests*, see paragraph (g) of this section.

(b) *Manner and scope of election—* (1) *Time for filing application for permission to aggregate separate nonoperating mineral interests under paragraph (a) of this section.* The application for permission to aggregate separate nonoperating mineral interests under paragraph (a) of this section shall be filed at any

time on or before May 1, 1961. Such application shall indicate the first taxable year for which the aggregation is to be formed. If, prior to January 10, 1961, an application has been filed, the taxpayer need file only a supplemental application containing such additional information as is necessary to comply with the requirements of subparagraph (2) of this paragraph.

(2) *Contents of application and returns under permission.* The application for permission to aggregate nonoperating mineral interests under paragraph (a) of this section shall include a complete statement of the facts upon which the taxpayer relies to show the undue hardship which would result if such an aggregation was not permitted. Such application shall also include a description of the nonoperating mineral interests owned by the taxpayer 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 filed with the district director for the district in which the taxpayer's income tax return was filed for the first taxable year for which such permission applies, and shall be accompanied by an amended return or returns if necessary.

(3) *Election; binding effect.* The election to aggregate separate nonoperating mineral interests under paragraph (a) of this section shall be binding upon the taxpayer for the first taxable year for which made and all subsequent taxable years beginning before January 1, 1958, unless consent to make a change is obtained from the Commissioner. The application for consent to make a change must set forth in detail the reason or reasons for such change. Consent to a different treatment shall not be granted where the principal purpose for such change is due to tax consequences. For rules relating to the binding effect of an election where the basis of an aggregated property in the hands of the transferee is determined

by reference to the basis in the hands of the transferor, see paragraph (c) of § 1.614-6.

(4) *Aggregations under the Internal Revenue Code of 1939.* An application for permission to aggregate nonoperating mineral interests under paragraph (a) of this section shall be submitted in accordance with the requirements of this paragraph notwithstanding the fact that the taxpayer may have aggregated such interests for taxable years to which the Internal Revenue Code of 1939 is applicable. If such interests were aggregated for taxable years to which the Internal Revenue Code of 1939 applies and the aggregation was approved by the Internal Revenue Service for such years after full consideration thereof on its merits, such approval will generally be accepted as evidence that undue hardship would result if the aggregation were not permitted.

(c) *Termination of aggregation of nonoperating mineral interests—(1) General rule.* Any aggregation of nonoperating mineral interests formed under paragraphs (a) and (b) of this section shall not apply with respect to any taxable year beginning after December 31, 1957. Thus, if a taxpayer makes a binding election to form such an aggregation for taxable years beginning before January 1, 1958, then in order to form an aggregation with respect to any taxable year beginning after December 31, 1957, he must obtain permission in accordance with the rules prescribed in paragraphs (d) and (e) of this section.

(2) *Bases of separate nonoperating mineral interests.* If a taxpayer forms an aggregation of nonoperating mineral interests under paragraphs (a) and (b) of this section which is terminated under subparagraph (1) of this paragraph, the adjusted bases of the separate nonoperating mineral interests included in such aggregation shall be determined in accordance with paragraph (a)(2) of § 1.614-6.

(d) *Aggregating nonoperating mineral interests for taxable years beginning after December 31, 1957, or for earlier taxable years.* 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 section 614(e), to form an aggregation of all of 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 avoidance of tax is a principal purpose of the taxpayer. An aggregation formed under the provisions of this paragraph shall be considered as one property for all purposes of the Code. In no event may nonoperating mineral interests in tracts or parcels of land which 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. For the definition of *nonoperating mineral interests*, see paragraph (g) of this section.

(e) *Manner and scope of election*— (1) *Time for filing application for permission to aggregate separate nonoperating mineral interests under section 614(e)*. The application for permission to aggregate separate nonoperating mineral interests under section 614(e) and paragraph (d) of this section shall be made in writing to the Commissioner of Internal Revenue, Washington, DC 20224. Such application shall 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 which is to be included in the aggregation, whichever is later. However, if the last day on which the application may be filed under this paragraph falls before May 1, 1961, such application may be filed at any time on or before May 1, 1961. If, prior to January 10, 1961, an application has been filed, the taxpayer need file only a supplemental application containing such additional information as is necessary

to comply with subparagraph (4) of this paragraph.

(2) *Election to apply section 614(e) retroactively*. The application for permission to aggregate separate nonoperating mineral interests under section 614 (e) and paragraph (d) of this section may be filed, at the election of the taxpayer, for any taxable year beginning before January 1, 1958, to which the Internal Revenue Code of 1954 is applicable. In such case, the application may be filed at any time on or before May 1, 1961. Such application shall designate the first taxable year for which the aggregation is to be formed. If, prior to January 10, 1961, an application has been filed, the taxpayer need file only a supplemental application containing such additional information as is necessary to comply with the requirements of subparagraph (4) of this paragraph.

(3) *Limitation*. If the taxpayer forms any aggregation of nonoperating mineral interests under subparagraph (2) of this paragraph, then any aggregation of nonoperating mineral interests formed under paragraphs (a) and (b) of this section shall not apply for any taxable year. The provisions of this subparagraph may be illustrated by the following example:

Example. In 1954, taxpayer A owns six separate nonoperating mineral interests designated No. 1 through No. 6. Interests Nos. 1 through 3 are royalty interests in contiguous tracts of land. Interests Nos. 4 through 6, which are located in an entirely different area from interests Nos. 1 through 3, are royalty interests in tracts of land which are not contiguous but which are adjacent to each other. In 1959 taxpayer A obtains permission and elects under section 614(e) and subparagraph (2) of this paragraph to form an aggregation of interests Nos. 4 through 6 for 1956 and all subsequent taxable years. Taxpayer A may not elect to form an aggregation of interests Nos. 1 through 3 under paragraphs (a) and (b) of this section for 1954 or any subsequent taxable year. If taxpayer A wishes to form an aggregation of interests Nos. 1 through 3, he must obtain permission under paragraph (d) of this section and this paragraph.

(4) *Contents of application and returns under permission*. The application for permission to aggregate nonoperating mineral interests under section 614(e) and paragraph (d) of this section shall include a complete statement of the

facts upon which the taxpayer relies to show that 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 income tax 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.

(5) *Election; binding effect.* The election to aggregate separate nonoperating mineral interests under section 614 (e) and paragraph (d) of this section shall be 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. The application for consent to make a change must set forth in detail the reason or reasons for such change. Consent to a different treatment shall not be granted where the principal purpose for such change is due to tax consequences. For rules relating to the binding effect of an election where the basis of an aggregated property in the hands of the transferee is determined by reference to the basis in the hands of the transferor, see paragraph (c) of § 1.614-6.

(6) *Aggregations under the Internal Revenue Code of 1939.* An application for permission to aggregate nonoperating mineral interests under section 614 (e) and paragraph (d) of this section shall be submitted in accordance with the requirements of this paragraph notwithstanding the fact that the taxpayer may have aggregated such interests for taxable years to which the In-

ternal Revenue Code of 1939 is applicable. If such interests were aggregated for taxable years to which the Internal Revenue Code of 1939 applies and the aggregation was approved by the Internal Revenue Service for such years after full consideration thereof on its merits, such approval will generally be accepted as evidence that avoidance of tax is not a principal purpose of forming the aggregation.

(f) *Elections; when effective.* If the taxpayer has elected to form an aggregation under either paragraph (a) or paragraph (d) of this section, the date on which the aggregation becomes effective is the first day of the first taxable year for which the election is made; except that if any separate nonoperating mineral interest included in such aggregation was acquired after such first day, the date on which the inclusion of such interest in such aggregation becomes effective is the date of its acquisition.

(g) *Definition of nonoperating mineral interests.* For purposes of this section, *nonoperating mineral interests* includes only those interests described in section 614(a) which are not operating mineral interests within the meaning of paragraph (b) of § 1.614-2. The taxpayer who holds the operating or working rights in a mineral deposit, but is not actually conducting operations with respect to such deposit, does not have a nonoperating mineral interest in such deposit notwithstanding the fact that he intends to transfer such operating rights at a later time.

[T.D. 6524, 26 FR 158, Jan. 10, 1961]

§ 1.614-6 Rules applicable to basis, holding period, and abandonment losses where mineral interests have been aggregated or combined.

(a) *Basis of property resulting from aggregation or combination—(1) General rule.* (i) When a taxpayer has aggregated as one property two or more interests under section 614(b) (prior to its amendment by section 226(a) of the Revenue Act of 1964), (c), or (e), the unadjusted basis of such aggregated property shall be the sum of the unadjusted bases of the various mineral interests aggregated. The adjusted basis of the aggregated property on the effective date of the aggregation shall