

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Telephone Number:

Refer Reply To:
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Date:
November 10, 2009

Legend

Taxpayer =

Company =

Dear :

This letter responds to your request, dated May 11, 2009, for a ruling on whether you are allowed to claim the allowance for depletion provided by § 611 of the Internal Revenue Code under the facts described below.

The representations set out in your letter follow.

Taxpayer is employed by Company. Company has created a "Bonus Pool" plan for key personnel at Company. Taxpayer participates in the plan. Each Bonus Pool consists of a percentage of the net profits from a designated well. The plan documents define "net profits" as the proceeds received by Company from the sale of the oil, gas, and minerals that are produced, saved, and sold from a designated well less chargeable expenditures, as defined in the plan documents. However, the plan documents state that:

Though the Company may hold a Designated Well, which has been designated for a given Bonus Pool, neither the Plan nor the Bonus Pool creates any lien, encumbrance, right, title, or other interest of any kind whatsoever in any Participant or Participant Group in any well, property, or portion of a property containing such well or in the Net Profits derived from it. The designation of a well is only a part of the procedure used in calculating a Bonus due Participants

or Participant Groups under the Plan and provides no legal entitlement to those specific assets.

Company pays the amounts to plan participants and includes the amounts paid on employees' Forms W-2 for the year in which the amounts are paid.

Taxpayer has requested a ruling on whether a participant in the Bonus Pool plan may claim depletion deductions.

Law and Analysis

Section 611(a), in the case of mines, wells and other enumerated natural deposits, allows as a deduction in computing taxable income a reasonable allowance for depletion under regulations prescribed by the Secretary or his delegate.

Section 1.611-1(b)(1) of the Income Tax Regulations provides that annual depletion deductions are only allowed to the owner of an economic interest in mineral deposits. An economic interest is possessed in every case in which the taxpayer has acquired, by investment, any interest in mineral in place and secures, by any form of legal relationship, income derived from the extraction of the mineral to which he must look for a return of his capital. Further, the regulation states that a person who has no capital investment in the mineral deposit does not possess an economic interest merely because through a contractual relation he possesses a mere economic or pecuniary advantage derived from production.

Section 1.611-1(d)(5) defines minerals for purposes of this section of the regulations to include ores of the metals, coal, oil, gas, and all other natural metallic and nonmetallic deposits.

Based on the information submitted and the representations made, we conclude that Taxpayer does not own an economic interest in mineral in place within the meaning of § 1.611-1(b)(1). Therefore, Taxpayer is not entitled to depletion deductions.

This ruling is directed only to the taxpayer requesting 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 letter is being sent to your authorized representative.

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 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.

Sincerely,

Brenda M. Stewart
Senior Counsel, Branch 6
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

cc: