

§ 1.9004-3

corresponding provisions of the Internal Revenue Code of 1939) to those years:

(1) The "gross income from the property" for purposes of section 613(c) of the Internal Revenue Code of 1954 (and corresponding provisions of the Internal Revenue Code of 1939) shall be 50 percent of the amount for which the mineowner or operator sold, during the taxable year, the building or paving brick, drainage and roofing tile, sewer pipe, flower pots, and kindred products manufactured from the clay and shale described in paragraph (b) of § 1.9004-1, but shall not exceed an amount equal to \$12.50 multiplied by the number of short tons of all such clay or shale mined and used by the mineowner or operator in the manufacture of the products sold during the taxable year; and

(2) The "taxable income from the property" (computed without allowance for depletion) for purposes of section 613(a) of the Internal Revenue Code of 1954 (and corresponding provisions of the Internal Revenue Code of 1939) shall be 50 percent of the taxable income from the manufactured products sold during the taxable year (computed without allowance for depletion).

(b) *Effect on depletion rates and other items.* The election shall have no effect on the applicable rate of percentage depletion for the taxable years to which the election is effective. In applying the election to the years affected there shall be taken into account the effect that any adjustments resulting from the election shall have on other items affected thereby, such as charitable contributions, foreign tax credit, net operating loss, and the effect that adjustments to any such items shall have on other taxable years. The provisions of the Act are applicable with respect to taxable years subject to the Internal Revenue Code of 1939 for purposes of applying sections 450 and 453 of that Code.

(75 Stat. 674; 26 U.S.C. 613 note)

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§ 1.9004-3 Statutes of limitation.

The period within which the assessment of any deficiency or the credit or refund of any overpayment attrib-

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utable to the election may be made shall not expire sooner than one year after December 11, 1961. Thus, if assessment of a deficiency or credit or refund of an overpayment, whichever is applicable, is not prevented on September 26, 1961, the time for making assessment or credit or refund shall not expire for at least one year after December 11, 1961, notwithstanding any other provision of law to the contrary. Even though assessment of a deficiency is prevented on September 26, 1961, if commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1954 may be made on such date, then any deficiency resulting from the election may be assessed at any time within 1 year after December 11, 1961. If a taxpayer makes the election, he shall be deemed to have consented to the application of the provisions of the Act extending the time for assessing a deficiency attributable to the election. The Act does not shorten the periods of limitation otherwise applicable. An agreement may be entered into under section 6501(c)(4) of the Internal Revenue Code of 1954 and corresponding provisions of prior law to extend the period for assessment.

(75 Stat. 674; 26 U.S.C. 613 note)

[T.D. 6575, 26 FR 9632, Oct. 12, 1961]

§ 1.9004-4 Manner of exercising election.

(a) *By whom election is to be made.* Generally, the taxpayer whose tax liability is affected by the election shall make the election. In the case of a partnership, or a corporation electing under the provisions of subchapter S, chapter 1 of the Internal Revenue Code of 1954, the election shall be exercised by the partnership or such corporation, as the case may be.

(b) *Time and manner of making election.* The election shall be made on or before December 11, 1961, by filing a statement with the district director with whom the taxpayer's income tax return for the taxable year in which the election is made is required to be filed. The statement shall include the following:

(1) A clear indication that an election is being made under the Act, and