For purposes of this section:


§ 1.9003–1 Election to have the provisions of section 613(c) (2) and (4) of the 1954 Code, as amended, apply for past years.

(a) In general. Section 4 of the Act of September 14, 1960 (Pub. L. 86–781, 74 Stat. 1017), amended section 302(c) of the Public Debt and Tax Rate Extension Act of 1960 to permit certain taxpayers for taxable years beginning before January 1, 1961, to apply the provisions of section 302(b) of that Act. Section 302(b) of the Act amended section 613(c) (2) and (4) of the Internal Revenue Code of 1954 to read in part as follows:

Sec. 613. Percentage Depletion. * * *

(c) Definition of gross income from property. For purposes of this section:

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(2) Mining. The term “mining” includes not merely the extraction of the ores or minerals from the ground but also the treatment processes considered as mining described in paragraph (4) (and the treatment processes necessary or incidental thereto), and so much of the transportation of ores or minerals (whether or not by common carrier) from the point of extraction from the ground to the plants or mills in which such treatment processes are applied thereto as is not in excess of 50 miles unless the Secretary or his delegate finds that the physical and other requirements are such that the ore or mineral must be transported a greater distance to such plants or mills.

§ 1.9003–2 Effect of election.

(a) In general. If a taxpayer makes the election described in paragraph (b) of §1.9003–1, he shall be deemed to have consented to the application of section 302(b) of the Act with respect to all
taxable years to which the election applies. Thus, subparagraph (F) of section 613(c)(4) of the Internal Revenue Code of 1954 as amended must be applied in determining gross income from mining for the taxable years to which the election applies (including years subject to the Internal Revenue Code of 1939) whether or not the taxpayer is litigating the issue. Further, the election shall apply to all calcium carbonates or other minerals mined and used by the taxpayer in making cement.

(b) Effect on gross income from mining. The election is only determinative of what constitutes “mining” for purposes of computing percentage depletion and has no effect on the method employed in determining the amount of gross income from mining. 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 section 302(b) 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.


§ 1.9003–4 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 Code, 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 November 15, 1960, 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 section 302(c)(2) of the Act, and
2. The taxable years to which the election applies.

Amended income tax returns reflecting any increase or decrease in tax attributable to the election shall be filed for the taxable years to which the election applies. In the case of partnerships and electing small business corporations under subchapter S, chapter 1 of the Code, amended returns shall be filed by the partnership or electing small business corporations, as the case may be. Any amended return shall be filed with the office of the district director with whom the taxpayer files his income tax return for the taxable year in which the election is made and, if practicable, on the same date the statement of election is filed, but

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