§ 1.9004–1

(e) Terms; applicability of other laws. Except where otherwise distinctly expressed or manifestly intended, terms used in this section shall have the same meaning as when used in the Internal Revenue Code of 1954 (or corresponding provisions of the Internal Revenue Code of 1939) and all provisions of law shall apply with respect to this section as if this section were a part of such Code (or corresponding provisions of the Internal Revenue Code of 1939).

(f) Regulations. The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this section.

(75 Stat. 674; 26 U.S.C. 613 note)
[T.D. 6575, 26 FR 9632, Oct. 12, 1961]

§ 1.9004–2

Effect of election.

(a) In general. If a taxpayer makes the election described in paragraph (b) of § 1.9004–1, he shall be deemed to have consented to the application of the Act with respect to all the clay and shale described in that paragraph for all taxable years for which the election is effective whether or not the taxpayer is litigating the issue for any of such years. Thus, in applying section 613 of the Internal Revenue Code of 1954 (and 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. The election must be made in accordance with §1.9004–4 on or before December 11, 1961, and the election shall become irrevocable on December 11, 1961.

(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; and

(3) Commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1954, is not prevented on September 26, 1961, by the operation of any law or rule of law. The election is also effective for any taxable year beginning before January 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before September 26, 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

(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 Internal Revenue Code of 1954, amended returns shall be filed by the partnership or electing small business corporation, as well as by the partners or shareholders, 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. 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.