IT 2269 - Income tax : meaning of 'mining operations' for purposes of Division 10. open cut workings for winning of lizardite serpentine.

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TAXATION RULING NO. IT 2269

INCOME TAX : MEANING OF 'MINING OPERATIONS' FOR PURPOSES OF DIVISION 10. OPEN CUT WORKINGS FOR WINNING OF LIZARDITE SERPENTINE.

F.O.I. EMBARGO: May be released

REF H.O. REF: 84/1130-1 DATE OF EFFECT:

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1075994	MINING OPERATIONS OPEN CUT WORKINGS SERPENTINE	DIVISION 10

OTHER RULINGS ON TOPIC: IT 353 IT 356

PREAMBLE Extraction of a mineral constitutes mining for the purposes of the Income Tax Assessment Act 1936 where the mineral is recovered from below the surface of the earth by underground workings of some kind. If a mineral traditionally has been or is mined by underground working, its recovery by any method, even open cut methods or the like, will constitute mining for those purposes.

2. This office was recently asked to consider whether extraction of lizardite serpentine by means of open cut workings would be accepted as 'mining operations' within the meaning of Division 10. The licence agreement under which the lizardite was to be extracted referred in various clauses to the quarry area, quarrying activities and quarried rock. Advice of the relevant State Department of Mineral Resources was that the proposed operations were to be in the nature of quarrying.

FACTS 3. Serpentine, a metamorphic rock, is the hydrated form of peridotite. Peridotite, a magnesium oxide and magnesium silicate formation, becomes hydrous magnesium silicate (Mg3 Si2 O5 (OH)4) or serpentine when hydrated and to some degree silicated under pressure.

4. The three major forms of serpentine are chrysotile, antigorite and lizardite. Chrysotile is an asbestos, a fibrous rock capable of being spun or felted. It is found as veins in peridotite and in antigorite or lizardite. Antigorite is soapy and takes a high polish; it is used both as building stone and as a semi-precious stone. Lizardite is not so well suited to building or jewellery applications - it does have a commercial use, however, in the production of steel.

5. Chrysotile asbestos has been won historically and is won in the present day by underground working although open cut

methods are now commonly employed. Antigorite and lizardite have not been and are not commonly won by any methods but open-cut or quarrying. Lizardite has not been and is not sought by underground working techniques although, in the process of extracting chrysotile by underground workings, lizardite may be brought to the surface.

RULING 6. Extraction of a mineral constitutes mining for the purposes of the Income Tax Assessment Act 1936 only where the mineral is recovered from below the surface of the earth by undergound workings of some kind, or where the mineral traditionally has been or is recovered by underground working. This principle has been consistently applied in decisions of the High Court.

7. In view of the fact that lizardite has no history of being sought by underground workings, and in view of the fact that the proposed operations are themselves in the nature of quarrying, it is considered that lizardite extracted by open cut methods is not mined and that operations conducted for that purpose do not constitute "mining operations" for the purposes of the Act.

COMMISSIONER OF TAXATION
21 March 1986

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