Internal Revenue Service

Department of the Treasury

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Person to Contact:

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CC:PSI:B07-PLR-121622-00
Date:
February 13, 2002

LEGEND:

P =

Q =

W =

X =

Y =

Z =

Agreement =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

$A =

$B =

$C =

$D =

$E =

$F =

Site X =

Site Y =

Dear :

This letter responds to a letter dated October 16, 2000 and subsequent correspondence, submitted on behalf of P by its authorized representative, requesting rulings under sections 29 and 702 of the Internal Revenue Code.

FACTS

The facts as represented by P and P's authorized representative are as follows:

P is a limited liability company, taxable as a partnership. X, a limited liability company, owns a 90% member interest in P. Y, a limited liability company, owns a 10% member interest in P. W is the sole member of X, and Z is the sole member of Y. Because X and Y are treated as disregarded entities for federal income tax purposes, W is treated as owning X s member interest in P and Z is treated as owning Y s member interest in P. The members of P have made (and are expected to continue to make) periodic cash capital contributions to P to pay its operating costs in accordance with their respective membership interests.

Effective on Date 1, pursuant to the terms of the Agreement, Y acquired its membership interest directly from P. Effective on Date 2, pursuant to the terms of the Agreement, X acquired its membership interest from the prior owners of P for a $A cash payment and a contingent payment note. On Date 2, P had certain fixed liabilities and $E of these liabilities were allocated to X to be paid by P through capital contributions by X. On Date 2, X made a cash capital contribution of $F to P, which P used primarily to pay certain of its fixed liabilities. In addition, X agreed to make periodic cash capital contributions to fund P s payment of the balance of P s fixed liabilities that were allocated to X, and Y agreed to make periodic cash capital contributions to fund P s payment of the remainder of P s fixed liabilities. Effective as of Date 3, the Agreement was modified by a second amendment and a third amendment to provide that the consideration payable by X for its membership interest would include a fixed payment note of $B principal amount, in addition to $A in cash and a revised contingent payment note. P represents that, based on the expected production level of the Facilities on Date 3, the net present value of the cash, the fixed payment note, and the fixed liabilities of P that were allocated to X (to be repaid by P with capital contributions from X) will exceed 50 percent of the net present value of the total consideration payable and allocated to X in connection with the acquisition of its P membership interest from the prior owners.

On Date 4, P received PLR 199906028, which rules on issues similar to those

addressed by this letter. P seeks confirmation of the prior rulings received in light of changes in the ownership of P and a relocation of its Facilities.

The Facilities were constructed pursuant to a construction contract, dated Date 5, that was partially assigned to P by Q effective Date 6. The construction contract provides for liquidated damages of at least five percent of the cost of the Facilities. It also includes a description of the Facilities to be constructed, a completion date, and a price. The construction contract is valid under state law.

P is the original owner of the Facilities which were constructed at Site X. P represents that the Facilities were placed in service within the meaning of section 29(g)(1)(A) before July 1, 1998.

The Facilities consist of two lines for the production of a solid synthetic fuel from coal using the process described below. The Facilities can be moved from one site to another depending on the availability, price and location of coal feedstock. Due to an inability to obtain sufficient coal feedstock at Site X, subsequent to Date 1 P relocated the Facilities from that location to a new location at Site Y. Following this relocation, the fair market value of the original property comprising a part of the Facilities was more than 20 percent of the Facilities total value (the cost of the new property plus the value of the original property).

P entered into a Facilities Operating Agreement with Y for the operation and maintenance of the Facilities. Under this agreement, Y provides workers and certain services and equipment to P for a fixed fee of $C per ton of synthetic fuel produced, subject to an annual inflation adjustment. Y is subject to the direction and control of P, which has the sole authority to set production levels and make other strategic decisions. P pays for all operating costs other than the cost of workers and equipment provided by Y and certain liability insurance. In addition, Y provides a working capital loan to P.

Pursuant to an Exclusive Coal Fines Supply Agreement, P appoints Y as its exclusive supplier of coal feedstock meeting certain minimum quality specifications. Y provides this coal feedstock to P for its delivered cost plus $D per ton. If Y is unable to provide sufficient coal feedstock to satisfy P s requirements, P can purchase its feedstock from other suppliers.

P also entered into an Exclusive Agreement for Marketing of Product with Y. Under this agreement, Y undertakes to market all of the synthetic fuel produced by the Facilities for a brokerage fee of $D per ton (with an additional $D per ton payable for synthetic fuel that needs to be transloaded onto barges). If Y determines that it is unable to market all of the synthetic fuel produced by P, then P can market the synthetic fuel. Y only receives payment for synthetic fuel it markets and sells. P has represented that all sales of synthetic fuel will be to unrelated persons.

As noted above, the Facilities consist of two lines for the production of a solid synthetic fuel from coal. For each production line, the feedstock coal is thoroughly mixed

with a heated chemical reagent in a pugmill. After leaving the pugmill, the mixture is carried by conveyor belt to a briquetter. Each briquetter is equipped with a short conveyor belt running under it that receives the resulting solid synthetic fuel product and carries it to a common collection belt and then out of the Facilities to a storage area. In P s production process, the combination of the chemically reactive agent, the mixing process, and the compression pressure in the roll briquetter process results in the formation of a solid synthetic fuel product. The synthetic fuel produced is currently sold to steel producers, power generators and other third party users. The Facilities utilize coal feedstock and chemical reagents that meet the requirements of Rev. Proc. 2001-34, 2001-22 I.R.B. 1293.

In the past, the Facilities have used various feedstock sources, chemical reagents and chemical reagent concentrations as described in P s letter ruling request. P has had recognized experts in coal and chemical analysis conduct tests on synthetic fuel samples produced by P using each reagent identified in the request for rulings. These tests are described in P's letter ruling request and subsequent correspondence from P s authorized representative. Based on this testing of the reagents, the experts have concluded that there was a measurable, significant change in the chemical composition of the resulting synthetic fuel compared to the unreacted coal feedstocks and chemical reagent.

The Amended and Restated Operating Agreement of P allocates receipts from the sale of synthetic fuel among its members in accordance with their membership interests.

The rulings requested by P are as follows:

(1) P, by using the process and the Facilities, produces a solid synthetic fuel from coal that constitutes a "qualified fuel" within the meaning of section 29(c)(1)(C).

(2) The contract for construction of the Facilities constitutes a "binding written contract" in effect before January 1, 1997, within the meaning of section 29(g)(1)(A).

(3) The Facilities are "placed in service" for purposes of section 29(g)(1) on the date that the Facilities are first placed in a condition or state of readiness and availability to produce a solid synthetic fuel from coal, as provided in 1.46-3(d)(1)(ii) and 1.167(a)-11(e)(1)(i).

(4) Production of qualified fuel from the Facilities will be attributable solely to P within the meaning of section 29(a)(2)(B) and P will be entitled to the section 29 credit for the production of qualified fuel from the Facilities that is sold to unrelated persons.

(5) Provided the Facilities were "placed in service" prior to July 1, 1998, within the meaning of section 29(g)(1), relocation of the Facilities to a different location after June 30, 1998, or replacement of parts of the Facilities after that date, will not result in a new placed in service date for the Facilities for purposes of section 29 if the fair market value of the original property is more than 20 percent of the Facilities total fair market value immediately following the relocation or replacement.

(6) The credit allowed under section 29 may be passed through to and allocated among all the members of P under the principles of 702(a)(7) in accordance with each member s interest in P as of the time the credit arises. For purposes of the section 29 credit, a member s interest in P is determined based on a valid allocation of the receipts from the sale of the section 29 credit qualified fuel.

(7) Provided the Facilities were "placed in service" prior to July 1, 1998, within the meaning of section 29(g)(1), the Facilities will continue to be treated as placed in service before July 1, 1998 if sold to a new owner after such date.

(8) A termination of P under 708(b)(1)(B) will not preclude the reconstituted partnership from claiming the section 29 credit for the production and sale of synthetic fuel to unrelated persons.

RULING REQUEST #1

Section 29(a) allows a credit for qualified fuels sold by the taxpayer to an unrelated person during the taxable year, the production of which is attributable to the taxpayer. The credit for the taxable year is an amount equal to $3.00 (adjusted for inflation) multiplied by the barrel-of-oil equivalent of qualified fuels sold.

Section 29(c)(1)(C) defines "qualified fuels" to include liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks.

In Rev. Rul. 86-100, 1986-2 C.B. 3, the Internal Revenue Service ruled that the definition of the term "synthetic fuel" under 48(l) and its regulations is relevant to the interpretation of the term under section 29(c)(1)(C). Former 48(l)(3)(A)(iii) provided a credit for the cost of equipment used for converting an alternate substance into a synthetic liquid, gaseous, or solid fuel. Rev. Rul. 86-100 notes that both section 29 and former 48(l) contain almost identical language and have the same overall congressional intent, namely to encourage energy conservation and aid development of domestic energy production. Under 1.48-9(c)(5)(ii) of the Income Tax Regulations, a synthetic fuel "differs significantly in chemical composition," as opposed to physical composition, from the alternate substance used to produce it. Coal is an alternate substance under 1.48-9(c)(2)(i) of the Income Tax Regulations.

In Rev. Proc. 2001-30, 2001-19 I.R.B. 1163, the Service announced that it will resume issuance of rulings under section 29(c)(1)(C) for processes that do not go beyond the processes approved in the rulings issued prior to 2000.

Section 3 of Rev. Proc. 2001-34 provides that the Service will issue rulings that a solid fuel (other than coke) produced from coal is a qualified fuel under section 29(c)(1)(C) if the conditions set forth below are satisfied and evidence is presented that all, or substantially all, of the coal used as feedstock undergoes a significant chemical change. The conditions are that:

1. The feedstock coal consists of coal fines or crushed coal comprised of particles the majority of which, by weight, are no larger than 3/8 inch;

2. The feedstock coal is thoroughly mixed in a mixer: (a) with styrene or other monomers, (b) with quinoline (C_9H_7N) or other organic resin and left to cure for several days, (c) with ultra heavy hydrocarbons, or (d) with an aluminum and/or magnesium silicate binder following heating to a minimum temperature of 500 degrees Fahrenheit; and

3. The treated feedstock is subjected to elevated temperature and pressure that results in briquettes, pellets, or an extruded fuel product, or the taxpayer represents that the omission of this procedure will not significantly increase the production of the facility over the remainder of the period during which the section 29 credit is allowable.

Based on the representations of P and P's authorized representative, including the test results submitted by P, we conclude that the conditions of Rev. Proc. 2001-34 are met and that the process and reagents used in the Facilities as described in P's ruling request and subsequent correspondence produce a significant chemical change to the coal, transforming the coal feedstock into a solid synthetic fuel from coal. Therefore, we further conclude that P, by using the process and reagents described in the request for rulings and the Facilities, produces a solid synthetic fuel from coal that constitutes a "qualified fuel" within the meaning of section 29(c)(1)(C).

RULING REQUEST #2

Sections 29(f)(1)(B) and (f)(2) provide that section 29 applies with respect to qualified fuels which are produced in a facility placed in service after December 31, 1979, and before January 1, 1993, and which are sold before January 1, 2003.

Section 29(g)(1) modifies section 29(f) in the case of a facility producing qualified fuels described in section 29(c)(1)(C), which qualified fuels include solid synthetic fuels produced from coal or lignite. Section 29(g)(1)(A) provides that for purposes of section 29(f)(1)(B), a facility shall be treated as placed in service before January 1, 1993, if the facility is placed in service before July 1, 1998, pursuant to a binding written contract in effect before January 1, 1997. Section 29(g)(1)(B) provides that if the facility is originally placed in service after December 31, 1992, section 29(f)(2) shall be applied by substituting "January 1, 2008" for "January 1, 2003".

A contract is binding only if it is enforceable under local law against a taxpayer, and does not limit damages to a specified amount, e.g., by use of a liquidated damages provision. A contract provision limiting damages to an amount equal to at least five percent of the total contract price, for example, should be treated as not limiting damages. The construction contract, executed prior to January 1, 1997, provides for liquidated damages of at least five percent of the total contract price and includes such essential features as a description of the facility to be constructed, a completion date, and a price. Therefore, we conclude that the construction contract is a binding written contract in effect before January 1, 1997, within the meaning of section 29(g)(1)(A).

RULING REQUESTS #3 and #5

Sections 29(f)(1)(B) and (f)(2) of the Code provide that section 29 applies with respect to qualified fuels which are produced in a facility placed in service after December 31, 1979, and before January 1, 1993, and which are sold before January 1, 2003.

Section 29(g)(1) of the Code modifies section 29(f) in the case of a facility producing qualified fuels described in section 29(c)(1)(C), which qualified fuels include solid synthetic fuels produced from coal or lignite. Section 29(g)(1)(A) provides that for purposes of section 29(f)(1)(B), such a facility is to be treated as placed in service before January 1, 1993, if the facility is placed in service before July 1, 1998, pursuant to a binding, written contract in effect before January 1, 1997. Section 29(g)(1)(B) provides that if the facility is originally placed in service after December 31, 1992, section 29(f)(2) is to be applied by substituting for the date therein January 1, 2008.

To qualify for the section 29 credit, the facility must be placed in service before July 1, 1998, pursuant to a binding written contract in effect before January 1, 1997. While section 29 does not define "placed in service," the term has been defined for purposes of the deduction for depreciation and the investment tax credit. Property is "placed in service" in the taxable year the property is placed in a condition or state of readiness and availability for a specifically assigned function. Sections 1.167(a)-11(e)(1)(i) and 1.46-3(d)(1)(ii) of the Income Tax Regulations. "Placed in service" has consistently been construed as having the same meaning for purposes of the deduction for depreciation and the investment tax credit. See Rev. Rul. 76-256, 1976-2 C.B. 46. When property is placed in service is a factual determination, and we express no opinion on when the Facilities were placed in service.

Rev. Rul. 94-31, 1994-1 C.B. 16, concerns 45, which provides a credit for electricity produced from certain renewable resources, including wind. The credit is based on the amount of electricity produced by the taxpayer at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service, and sold by the taxpayer to an unrelated person during the taxable year. Rev. Rul. 94-31 holds that, for purposes of 45, a facility qualifies as originally placed in service even though it contains some used property, provided the fair market value of the used property is not more than 20 percent of the facility's total value (the cost of the new property plus the value of the used property).

Rev. Rul. 94-31 concerns a factual context similar to the present situation. Consistent with the holding in Rev. Rul. 94-31, provided the Facilities were placed in service prior to July 1, 1998, within the meaning of section 29(g)(1), relocation of the Facilities after June 30, 1998, or replacement of parts of the Facilities after that date, will not result in a new placed in service date for the Facilities or otherwise prevent the Facilities from continuing to be treated as originally placed in service prior to July 1, 1998, if the fair market value of the original property is more than 20 percent of the Facilities' total fair market value immediately following the relocation or replacement.

RULING REQUEST #4

Section 29(a) allows a credit for qualified fuels sold by the taxpayer to an unrelated person during the taxable year, the production of which is attributable to the taxpayer.

Under section 7701(a)(14), "taxpayer" means any person subject to any internal revenue tax. Furthermore, 7701(a)(1) provides that when used in title 26, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, "person" will be construed to mean and include an individual, trust, estate, partnership, association, company, or corporation.

P is the taxpayer for purposes of section 29(a)(2)(B) of the Code because a limited liability company such as P may be treated for tax purposes as either a partnership or a corporation, either of which is a taxpayer under 7701(a)(14). P will own the Facilities, and through an agent, P will operate and maintain the Facilities and sell the resulting qualified fuel. Therefore, all production of qualified fuel from the Facilities will be attributable solely to P within the meaning of section 29(a)(2)(B) and P will be entitled to the section 29 credit for the production of qualified fuel from the Facilities that is sold to unrelated persons.

RULING REQUEST #6

Section 29(a) allows a credit for qualified fuels solid by the taxpayer to an unrelated person during the taxable year, the production of which is attributable to the taxpayer.

Section 7701(a)(14) provides that "taxpayer" means any person subject to any internal revenue tax. Generally, under 7701(a)(1), the term "person" includes an individual, a trust, estate, partnership, association, company, or corporation.

Section 702(a)(7) provides that each partner determines the partner's income tax by taking into account separately the partner's distributive share of the partnership's other items of income, gain, loss, deduction, or credit to the extent provided by regulations prescribed by the Secretary. Section 1.702-1(a) provides that the distributive share is determined as provided in 704 and 1.704-1.

Section 704(a) provides that a partner's distributive share of income, gain, loss, deduction, or credit is, except as otherwise provided in chapter 1 of subtitle A of title 26, determined by the partnership agreement. Section 704(b) provides that a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) is determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances) if (1) the partnership agreement does not provide as to the partner's distributive share of income, gain, loss, deduction, or credit (or item thereof), or (2) the allocation to a partner under the agreement of income, gain, loss, deduction, or credit (or item thereof) does not have substantial economic effect.

Section 1.704-1 (b)(4)(ii) provides that allocations of tax credits and tax credit recapture (except for 38 property) are not reflected by adjustments to the partners' capital

accounts. Thus, these allocations cannot have economic effect under 1.704-1(b)(2)(ii)(b)(1), and the tax credits and tax credit recapture must be allocated in accordance with the partners' interests in the partnership as of the time the tax credit or credit recapture arises. If a partnership expenditure (whether or not deductible) that gives rise to a tax credit in a partnership tax year also gives rise to valid allocations of partnership loss or deduction (or other downward capital account adjustments) for the year, then the partners' interests in the partnership with respect to such credit (or the cost giving rise to it) are in the same proportion as the partners' respective distributive shares of the loss or deduction (and adjustments). See 1.704-1 (b)(5), example (11). Identical principles apply in determining the partners' interests in the partnership with respect to tax credits that arise from receipts of the partnership (whether or not taxable).

Based on the information submitted and the representations made, we conclude that, assuming the solid synthetic fuel produced and sold qualifies for the section 29 credit, the credit will be allowed to P and the credit may be passed through to and allocated among the members of P under the principles of 702(a)(7) in accordance with each member's interest in P as of the time the credit arises. For purposes of the section 29 credit, a member's interest in P is determined based on a valid allocation of the receipts from the sale of the section 29 credit qualified fuel.

RULING REQUEST #7

The section 29 credit has always been a time sensitive credit in that eligibility for the credit is determined when facilities or wells producing qualified fuels are placed in service and when the qualifying fuels are produced and sold to unrelated persons. For example, the section 44D credit, as originally enacted in the Crude Oil Windfall Profit Tax Act of 1980, was generally available for the production and sale of alternative fuels after December 31, 1979, and before January 1, 1990, on property that first began production after January 1, 1980.

Congress has extended the section 29 credit four times. The placed-in-service deadline and the period for claiming the section 29 credit were extended in the Technical and Miscellaneous Revenue Act of 1988 (1991 for placed in service), Omnibus Budget Reconciliation Act of 1990 (1993 for placed in service and 2003 for the end of the credit period), Energy Policy Act of 1992 (1997 for placed in service and 2007 for the end of the credit period), and Small Business Job Protection Act of 1996 (June 30, 1998, for placed in service).

If section 29(f)(1)(B) were read as requiring facilities producing qualified fuels to be placed in service by the taxpayer, facilities placed in service before 1980 that are sold or transferred to a new taxpayer after 1979 would entitle the purchaser/transferee to claim the section 29 credit. It is clear from the legislative history of section 44D that Congress intended the credit to apply to facilities placed in service after 1979, and that the placed-in-service deadline in section 29(f)(1)(B) must be read as applying to when the facility is first placed in service within the applicable dates. The placed-in-service deadlines contained in section 29(f) and section 29(g) focus on the facility, and not the owner of the facility. The

legislative history of section 44D clearly shows that Congress wanted to encourage the production of new alternative fuels from facilities first placed in service after 1979, and not provide a tax incentive for production capacity in service before 1980.

Section 29(g)(2) demonstrates that Congress knows how to preclude transferees of facilities from claiming the section 29 credit. That provision provides that the extension of the period for placing facilities in service after 1992 does not apply to any facility that produces coke or coke gas unless the original use of the facility commences with the taxpayer.

Accordingly, the determination of whether a facility has satisfied the placed-in-service deadline under either section 29(f)(1)(B) or section 29(g)(1)(A) is made by reference to when the facility is first placed in service, not when the facility is transferred or sold to a different taxpayer. Therefore, provided the Facilities were placed in service prior to July 1, 1998 within the meaning of section 29(g)(1), the sale of the Facilities after June 30, 1998, will not result in a new placed in service date for the Facilities for purposes of section 29 for the new owner.

RULING REQUEST #8

Section 708(b)(1)(B) provides that a partnership shall be considered as terminated if within a twelve-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits.

Section 1.708-1(b)(1)(iv) provides that if a partnership is terminated by a sale or exchange of an interest, the following is deemed to occur: The partnership contributes all of its assets and liabilities to a new partnership in exchange for an interest in the new partnership; and, immediately thereafter, the terminated partnership distributes interests in the new partnership to the purchasing partner and the other remaining partners in proportion to their respective interests in the terminated partnership in liquidation of the terminated partnership, either for the continuation of the business by the new partnership or for its dissolution and winding up. Section 1.708-1(b)(1)(iv) applies to terminations of partnerships under 708(b)(1)(B) occurring on or after May 9, 1997.

As discussed above, the placed-in-service deadline in section 29(f)(1)(B) and section 29(g)(1)(A) must be read as applying to when the facility is first placed in service within the applicable dates. The placed-in-service deadlines contained in section 29(f)(1)(B) and section 29(g)(1)(A) focus on the facility, and not the taxpayer owning the facility.

Accordingly, the determination of whether a facility has satisfied the placed-in-service deadline under section 29(f)(1)(B) and section 29(g)(1)(A) is made by reference to when the facility is first placed in service, not when the facility is placed in service by a transferee taxpayer. Therefore, we conclude that a termination of P under 708(b)(1)(B) will not preclude the reconstituted partnership from claiming the section 29 credit for the production and sale of synthetic fuel to unrelated persons.

CONCLUSIONS

Accordingly, based on the representations of P and Ps authorized representative, we conclude as follows:

(1) P, by using the process and reagents described in the request for rulings and the Facilities, produces a solid synthetic fuel from coal that constitutes a "qualified fuel" within the meaning of section 29(c)(1)(C).

(2) The contract for construction of the Facilities constitutes a "binding written contract" in effect before January 1, 1997, within the meaning of section 29(g)(1)(A).

(3) The Facilities are "placed in service" for purposes of section 29(g)(1) on the date that the Facilities are first placed in a condition or state of readiness and availability to produce a solid synthetic fuel from coal, as provided in 1.46-3(d)(1)(ii) and 1.167(a)-11(e)(1)(i) (we express no opinion on when the Facilities were placed in service).

(4) Production of qualified fuel from the Facilities will be attributable solely to P within the meaning of section 29(a)(2)(B) and P will be entitled to the section 29 credit for the production of qualified fuel from the Facilities that is sold to unrelated persons.

(5) Provided the Facilities were "placed in service" prior to July 1, 1998, within the meaning of section 29(g)(1), relocation of the Facilities to a different location after June 30, 1998, or replacement of parts of the Facilities after that date, will not result in a new placed in service date for the Facilities for purposes of section 29, if the fair market value of the original property is more than 20 percent of the Facilities total fair market value immediately following the relocation or replacement.

(6) The credit allowed under section 29 may be passed through to and allocated among all the members of P under the principles of 702(a)(7) in accordance with each member s interest in P as of the time the credit arises. For purposes of the section 29 credit, a member s interest in P is determined based on a valid allocation of the receipts from the sale of the section 29 credit qualified fuel.

(7) Provided the Facilities were "placed in service" prior to July 1, 1998, within the meaning of section 29(g)(1), the Facilities will continue to be treated as placed in service before July 1, 1998 if sold to a new owner after such date.

(8) A termination of P under 708(b)(1)(B) will not preclude the reconstituted partnership from claiming the section 29 credit for the production and sale of synthetic fuel to unrelated persons.

Except as specifically ruled upon above, we express no opinion concerning the federal income tax consequences of the transaction described above. Specifically, we express no opinion on when the Facilities were placed in service for purposes of section 29.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. Temporary or final regulations

pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked by the adoption of temporary or final regulations to the extent the regulations are inconsistent with any conclusion in this ruling. See 12.04 of Rev. Proc. 2001-1, 2001-1 I.R.B. 1, 46. However, when the criteria in 12.05 of Rev. Proc. 2001-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to P's authorized representative.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,
(signed) Joseph H. Makurath
Senior Technician Reviewer, Branch 7
Office of Associate Chief Counsel
(Passthroughs and Special Industries)