**Internal Revenue Service**

Department of the Treasury

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June 6, 2002

In Re: Section 29 Request for a Ruling: Credit for Producing Fuel from a Nonconventional Source

LEGEND:

| | |
|---|---|
| Taxpayer | = |
| Partnership | = |
| Subsidiary A | = |
| Subsidiary B | = |
| Subsidiary C | = |
| Location 1 | = |
| Date1 | = |

Dear :

This letter responds to a letter dated March 21, 2002 submitted on behalf of Taxpayer by its authorized representative, requesting rulings under section 29 of the Internal Revenue Code.

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

On Date 1, Taxpayer received PLR 116945-00 (Prior Letter Ruling), which rules on similar issues addressed by this letter. Taxpayer seeks a confirmation of the rulings in light of the formation of Taxpayer by Taxpayer 's subsidiaries, A, B, and C, a change in the chemical reagent used to produce synthetic fuel, and relocation of one of two independent production lines of a synthetic fuel facility as described in the ruling request from Taxpayer's authorized representative.

The Prior Letter Ruling stated that Subsidiary A intended to contribute its synthetic fuel facility (Facility A) to a Delaware limited liability company (LLC A) and that Subsidiary B intended to contribute its synthetic fuel facility (Facility B) to another Delaware limited

liability company (LLC B). Instead, it is now represented that Subsidiary A and Subsidiary B have formed Partnership and will contribute all of the assets and liabilities associated with Facility A and Facility B to Partnership in exchange for the membership interests. Partnership may hold its interests in the facilities through wholly owned limited liability companies that will be disregarded as separate entities from Partnership for federal tax purposes. The operating agreement for Partnership will provide that any credits allowed under section 29(a) will be allocated among the members in accordance with their respective percentage interests at the time of the sale of the solid synthetic fuel giving rise to the credits.

Facility B consists of two production lines, each of which consists of a pellet mill which is fed by its associated mixing equipment and each of which is capable of being operated independently. Because each production line is capable of being operated independently and can independently produce synthetic fuel, each independent production line may be treated as a separate facility.

Taxpayer has indicated that it may relocate one of the two independent production lines to the Subsidiary C site near Location 1. The proposed relocation of a production line would require the duplication of relatively minor components, and site specific items involved in the relocation of any facility, such as site preparation, paving, foundations, area lighting, and utilities.

Taxpayer has represented that all of the major components of the production line would be relocated to the new site. In addition, Taxpayer has represented that the “production output” of the relocated production line will not be significantly increased at the new location. The “production output” is the amount of qualified fuel that can reasonably be expected to be actually produced by each production line using the prevailing practices in the industry regarding the performance of maintenance with regard to the various pieces of equipment in the production line, reasonable allowances for downtime for repairs and/or replacement of parts, etc.

In connection with the relocation of the production line, it is anticipated that Subsidiary C would acquire an interest in the Partnership in exchange for making certain capital contributions thereto such that, following the relocation, the interests in the Partnership would be held by Subsidiary A, Subsidiary B and Subsidiary C.

Partnership is considering use of other chemical change agents in the production of synthetic fuel at the Facility A and Facility B (Facilities). As described in Taxpayer’s letter ruling request, the Facilities and the process implemented in the Facilities, including the alternative chemical reagent used to produce the synthetic fuel, meet the requirements of Rev. Proc. 2001-34, 2001-22 I.R.B. 1293.

A recognized expert in coal combustion chemistry has performed tests on the coal used at the Facilities and the product produced at the Facilities including the changed

reagents and has submitted reports in which the expert concludes that significant chemical changes take place with the application of the process to the coal.

The rulings requested by Taxpayer are as follows:

1) Partnership, with the use of the enumerated process, will produce a "qualified fuel" within the meaning of section 29(c)(1)(C), and the production of the qualified fuel from the facilities will be attributable solely to Partnership, entitling Partnership to the section 29 credit for the production of the qualified fuel from the facilities that is sold to an unrelated person;

2) If the facilities were "placed in service" prior to July 1, 1998, within the meaning of section 29(g)(1), relocation of a facility after June 30, 1998, or replacement of parts of a facility after that date, will not result in a new placed in service date for the facility for purposes of section 29 provided the fair market value of the original property is more than 20 percent of facility's total fair market value at the time of the relocation or replacement;

3) The section 29 credit attributable to Partnership may be allocated to the members of Partnership in accordance with the members' interest in Partnership when the credit arises. For the section 29 credit, a member's interest in Partnership is determined based on a valid allocation of the receipts from the sale of the section 29 qualified fuel; and

4) If Facility B was "placed in service" prior to July 1, 1998, within the meaning of section 29(g)(1), relocation of one of the two independent production lines to a new location after June 30, 1998, will not result in a new placed in service date for Facility B for purposes of section 29, provided the essential components of the independent production line are retained and the production output at the new location is not significantly increased at the new location.

To qualify for the section 29 credit, a 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. Treasury Regulation §§ 1.167(a)-11(e)(1)(i) and 1.46-3(d)(1)(ii). "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.

Revenue Procedure 2001-30, 2001-19 I.R.B. 1163, provides that "a facility (including one of multiple facilities located at the same site) may be relocated without affecting the availability of the credit if all essential components of the facility are retained and the

production capacity of the relocated facility is not significantly increased at the new location."

Accordingly, based on the information submitted and the representations made, we conclude as follows:

(1) Partnership, with the use of the enumerated process, will produce a "qualified fuel" within the meaning of section 29(c)(1)(C), and the production of the qualified fuel from the facilities will be attributable solely to Partnership, entitling Partnership to the section 29 credit for the production of the qualified fuel from the facilities that is sold to an unrelated person;

(2) If the facilities were "placed in service" prior to July 1, 1998, within the meaning of section 29(g)(1), relocation of a facility after June 30, 1998, or replacement of parts of a facility after that date, will not result in a new placed in service date for the facility for purposes of section 29 provided the fair market value of the original property is more than 20 percent of facility's total fair market value at the time of the relocation or replacement;

(3) The section 29 credit attributable to Partnership may be allocated to the members of Partnership in accordance with the members' interest in Partnership when the credit arises. For the section 29 credit, a member's interest in Partnership is determined based on a valid allocation of the receipts from the sale of the section 29 qualified fuel; and

(4) If Facility B was "placed in service" prior to July 1, 1998 within the meaning of section 29(g)(1), relocation of one of its independent production lines to a new location after June 30, 1998, will not result in a new placed in service date for Facility B for purposes of section 29 provided the essential components of the independent production line are retained and the production output at the new location is not significantly increased at the new location.

Except as specifically ruled upon above, we express no opinion concerning the federal income tax consequences of the transaction described above.

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 section 12.04 of Rev. Proc. 2002-1, 2002-1 I.R.B. 1, 50. However, when the criteria of section 12.05 of Rev. Proc. 2002-1 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 Taxpayer and to a second authorized representative.

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

cc: