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Person To Contact:
, ID No.

Telephone Number:

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Dear :

This letter responds to a letter dated June 1, 2006 and subsequent correspondence, submitted on behalf of P by its authorized representative, requesting rulings under sections 45K and 702 of the Internal Revenue Code.

FACTS

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

On Date 1, P received PLR 200221041, which rules on issues similar to those addressed by this letter. P seeks confirmation of the prior rulings received in light of certain changes in the facts, including the potential use of two alternative chemical reagents, the transfers of indirect membership interests in P, and amendments to certain agreements relating to the operation of the Facilities.

P is a limited liability company organized under the laws of State V and is classified as a partnership for federal income tax purposes. A, a limited liability company organized

under the laws of State W, owns a a% membership interest in P. B, a limited liability company organized under the laws of State W, owns the remaining b% membership interest in P. C, a limited partnership organized under the laws of State W, is the sole member of A. D, a corporation organized under the laws of State X, is the sole member of B. A and B are treated as disregarded entities for federal income tax purposes. As a result, C is treated as owning A's membership interest in P, and D is treated as owning B's membership interest in P. The members of P have made (and are expected to continue to make) periodic cash contributions to P to fund its operating losses in accordance with their respective membership interests.

E, a limited liability company organized under the laws of State W, owns a c% limited partnership interest in C. F, a corporation organized under the laws of State Y, owns the remaining d% general partnership interest in C. As of Date 1, L, a general partnership organized under the laws of State Z, owned a e% membership interest in E, and G, a corporation organized under the laws of State W, owned the remaining f% membership interest in E.

The Facilities were constructed pursuant to a Construction Contract, dated Date 2, which was partially assigned to H by J effective Date 3. The Construction Contract provides for liquidated damages of at least five percent of the total contract price. 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 represents that the Facilities were placed in service within the meaning of section 45K(f)(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. 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 a solid synthetic fuel product in the form of an agglomeration. The Facilities utilize coal feedstock and chemical reagents that meet the requirements of Rev. Proc. 2001-34, 2001-1 C.B. 1293.

P entered into a Facilities Operating Agreement with B for the operation and maintenance of the Facilities. Under the Facilities Operating Agreement, B provides workers and certain services and equipment to P for a fixed fee of $X per ton of synthetic fuel produced, subject to an annual inflation adjustment and the temporary reduction pursuant to an amendment described below. B 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 B and certain liability insurance. In addition, B provides a working capital loan to P.

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

P has proposed that, on occasion, one of two specified alternative chemical reagents may be used in the process for the production of synthetic fuel. P has had recognized experts in coal and chemical analysis conduct tests on synthetic fuel samples produced by P using each alternative chemical reagent identified in the request for rulings. These tests are described in P's letter ruling request. Based on this testing of the alternative chemical 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 each of the alternative chemical reagents.

Since PLR 200221041, there have been five separate transfers of membership interests in E. First, on Date 4, K purchased a g% membership interest from L, thereby reducing L's ownership interest from e% to h%. Second, on Date 5, M purchased a i% membership interest from G, which reduced G's ownership from f% to j%. Third, on Date 6, N purchased a k% membership interest from L, which reduced L's ownership interest from h% to m%. Fourth, on Date 7, G repurchased the i% membership interest from M, increasing its ownership interest from j% to f% and eliminating M's ownership interest. Finally, on Date 8, G purchased a n% membership interest from L, which reduced L's ownership interest from m% to p% and increased G's ownership interest from f% to q%. K, N, and G are indirect subsidiaries of Q and are included in Q's consolidated federal income tax return.

Pursuant to section 45K(b)(1), the amount of the section 45K credit is subject to phaseout when the reference price for oil exceeds $23.50 (adjusted for inflation), with the phaseout for a calendar year being determined based on the reference price for such calendar year. Due to the recent increases in the price of oil, there is a substantial risk of a phaseout of the section 45K credit for calendar year 2006. In order to protect itself against this uncertainty, an affiliate of Q purchased call spread options of crude oil futures contracts that are traded on the New York Mercantile Exchange in a quantity and at strike prices sufficient to compensate the affiliate in the event of a phaseout of section 45K credits for 2006. Because the purchase of these options increased the economic cost of Q's indirect investment in P, K, N, and G demanded a partial offset of these costs through a reduction in their capital contribution requirements to E.

In an effort to satisfy K, N, and G's demands, three key modifications were implemented. First, pursuant to a first amendment to the Facilities Operating Agreement, B agreed to a temporary reduction in the Operating Fee payable to it by P,

which reduces the expenses incurred by P in producing the synthetic fuel, and thereby reduces P's operating losses that must be funded through capital contributions from A. Second, pursuant to a fourth amendment to the Purchase and Sale and Contribution Agreement, the prior owners of P agreed to reduce the calculated amount that is used to determine the contingent amounts payable under the purchase price note. Furthermore, pursuant to a fifth amendment to the Purchase and Sale and Contribution Agreement, the prior owners of P agreed to reduce any amounts payable due in Year 2 to a recalculation of certain amounts for Year 1 (including the amount of the section 45K credit). The reduction in A's obligation under the purchase price note, coupled with A's reduced obligation to make capital contributions to P, reduce the amount of capital contributions required to be made by C to A, which in turn reduce the amount of capital contributions to be made by E to C. Third, pursuant to an amendment to Agreement of Limited Partnership of C, F agreed to a temporary reduction in its quarterly management fee in order to reduce the capital contributions required to be made to C. This fee reduction further reduces the amount of capital contribution required to be made by E to C. The aggregate reduction in capital contributions required to be made to E in turn reduces the capital contribution requirements of E's members, including K, N, and G.

The rulings requested by P are as follows:

(1) P, by using the process and reagents described in the ruling request and the Facilities, produces a solid synthetic fuel from coal that constitutes a "qualified fuel" within the meaning of section 45K(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 45K(f)(1)(A).

(3) The Facilities are "placed in service" for purposes of section 45K(f)(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 sections 1.46-3(d)(1)(ii) and 1.167(a)-11(e)(1)(i) of the Income Tax Regulations.

(4) Provided the Facilities were "placed in service" prior to July 1, 1998, within the meaning of section 45K(f)(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 45K 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.

(5) Production of qualified fuel from the Facilities will be attributable solely to P within the meaning of section 45K(a)(2)(B) and P will be entitled to the section 45K

credit for the production of qualified fuel from the Facilities that is sold to unrelated persons.

(6) The credits allowed under section 45K may be passed through to and allocated among the members, consisting of C and B, under the principles of section 702(a)(7) in accordance with each member's interest in P as of the time the credit arises. For purposes of the section 45K credit, a member's interest in P is determined based upon a valid allocation of the taxpayer's gross income or loss that arises from receipts from the sales of the section 45K qualified fuel.

(7) Provided the Facilities were "placed in service" prior to July 1, 1998, within the meaning of section 45K(f)(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 section 708(b)(1)(B) will not preclude the reconstituted partnership from claiming the section 45K credit for the production and sale of synthetic fuel to unrelated persons.

RULING REQUEST #1

Section 45K(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 45K(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 section 48(l) and its regulations is relevant to the interpretation of the term under section 29(c)(1)(C) (redesignated as section 45K(c)(1)(C)). Former section 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 (redesignated as section 45K) and former section 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 section 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 section 1.48-9(c)(2)(i) of the Income Tax Regulations.

In Rev. Proc. 2001-30, 2001-1 C.B. 1163, the Service announced that it will resume issuance of rulings under section 45K(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) (redesignated as section 45K(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 is thoroughly mixed in a mixer: (a) with styrene or other monomers, (b) with quinoline (C9H7N) 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 45K 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 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 45K(c)(1)(C).

RULING REQUEST #2

Sections 45K(e)(1)(B) and (e)(2) provides that section 45K 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 45K(f)(1) modifies section 45K(e) in the case of a facility producing qualified fuels described in section 45K(c)(1)(C), which qualified fuels include solid synthetic fuels produced from coal or lignite. Section 45K(f)(1)(A) provides that for purposes of section 45K(e)(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 45K(f)(1)(B) provides that if the facility is originally placed in service after December 31, 1992, section 45K(e)(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 45K(f)(1)(A).

RULING REQUESTS #3 and #4

Sections 45K(e)(1)(B) and (e)(2) provides that section 45K 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 45K(f)(1) modifies section 45K(e) in the case of a facility producing qualified fuels described in section 45K(c)(1)(C), which qualified fuels include solid synthetic fuels produced from coal or lignite. Section 45K(f)(1)(A) provides that for purposes of section 45K(e)(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 45K(f)(1)(B) provides that if the facility is originally placed in service after December 31, 1992, section 45K(e)(2) shall be applied by substituting “January 1, 2008” for “January 1, 2003”.

To qualify for the section 45K 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 45K 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 section 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 section 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 45K(f)(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 #5

Section 45K(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, section 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 45K(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 section 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 45K(a)(2)(B) and P will be entitled to the section 45K credit for the production of qualified fuel from the Facilities that is sold to unrelated persons.

RULING REQUEST #6

Section 45K(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.

Under section 7701(a)(14), "taxpayer" means any person subject to any internal revenue tax. Furthermore, section 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.

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 section 704 and section 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 section 38 property) are not reflected by adjustments to the partners’ capital accounts. Thus, these allocations cannot have economic effect under section 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 section 1.704-1(b)(5), example (11). Identical principals 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 45K credit, the credit will be allowed to P and the credit may be passed through to and allocated among the members of P, consisting of C and D, under the principles of section 702(a)(7) in accordance with each member’s interest in P as of the time the credit arises. For purposes of the section 45K credit, a member’s interest in P is determined under section 1.704-1(b)(4)(ii) and is proportionate to valid allocations of the receipts from the sale of the section 45K credit qualified fuel.

RULING REQUEST #7

The section 45K 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 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 45K credit four times. The placed-in-service deadline and the period for claiming the section 45K 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 45K(e)(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 45K 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 45K(e)(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 45K(e) and section 45K(f) 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 45K(f)(2) demonstrates that Congress knows how to preclude transferees of facilities from claiming the section 45K 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 45K(e)(1)(B) or section 45K(f)(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 45K(f)(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 45K 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 interests in partnership capital and profits.

Section 1.708-1(b)(4) 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)(4) applies to terminations of partnerships under section 708(b)(1)(B) occurring on or after May 9, 1997.

As discussed above, the placed-in-service deadline in section 45K(e)(1)(B) and section 45K(f)(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 45K(e)(1)(B) and section 45K(f)(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 45K(e)(1)(B) and section 45K(f)(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 section 708(b)(1)(B) will not preclude the reconstituted partnership from claiming the section 45K credit for the production and sale of synthetic fuel to unrelated persons.

CONCLUSIONS

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

(1) P, by using the process and reagents described in the ruling request and the Facilities, produces a solid synthetic fuel from coal that constitutes a "qualified fuel" within the meaning of section 45K(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 45K(f)(1)(A).

(3) The Facilities are “placed in service” for purposes of section 45K(f)(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 section 1.46-3(d)(1)(ii) and 1.167(a)-11(e)(1)(i) of the Income Tax Regulations (we express no opinion on when the Facilities were placed in service).

(4) Provided the Facilities were “placed in service” prior to July 1, 1998, within the meaning of section 45K(f)(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 45K, 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.

(5) Production of qualified fuel from the Facilities will be attributable solely to P within the meaning of section 45K(a)(2)(B) and P will be entitled to the section 45K credit for the production of qualified fuel from the Facilities that is sold to unrelated persons.

(6) The credits allowed under section 45K may be passed through to and allocated among all the members of P, consisting of C and D, under the principles of section 702(a)(7) in accordance with each member’s interest in P as of the time the credit arises. For purposes of the section 45K credit, a member’s interest in P is determined is determined under section 1.704-1(b)(4)(ii) and is proportionate to valid allocations of the receipts from the sale of qualified fuel.

(7) Provided the Facilities were “placed in service” prior to July 1, 1998, within the meaning of section 45K(f)(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 section 708(b)(1)(B) will not preclude the reconstituted partnership from claiming the section 45K 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 45K. In addition, we express no opinion regarding the validity of the allocations under section 704(b) or under any other partnership provision.

Sincerely,

Joseph H. Makurath
Acting Branch Chief, Branch 7
(Passthroughs and Special Industries)