Internal Revenue Service

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Person To Contact:
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Telephone Number:

Refer Reply To:
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PLR-146970-06
Date: December 21, 2006

LEGEND:
P:
Company:
State:
X:
Parent:
A:
B:
C:
Date 1:
Date 2:
Date 3:
Date 4:
Date 5:
Prior Ruling:

Dear :

This letter is in response to your letter dated Date 1, submitted on behalf of P, requesting rulings under section 29 (redesignated as section 45K) of the Internal Revenue Code.

FACTS:

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

Company received Prior Ruling on Date 2, which ruled on the issues addressed by this letter. P seeks confirmation of the Prior Ruling in light of its acquisition of the Facility from X.

Company is a State limited liability company classified as a partnership for

federal income tax purposes. Company indirectly owned the Facility through its sole ownership of X, a State limited liability company that directly owned the Facility. P is a State limited liability company classified as a disregarded entity for federal income tax purposes all of the interests of which are owned by the Parent of an affiliated group of corporations.

On Date 3, P acquired all of the rights, title and interest in and to the Facility, and certain related properties, assets and rights held or used in connection with the ownership or operation of the Facility, from X pursuant to an Asset Purchase Agreement (Agreement). Under the Agreement, P agreed to make certain fixed and variable payments to X. P has provided projections based on expected operations that the net present value of the contingent payments to be made to X under the Agreement are less than fifty percent (50%) of the total payments made to X.

The Facility was constructed pursuant to a Construction Contract between A and B entered into on Date 4 and amended on Date 5. The Facility was designed to produce synthetic fuel from coal. The Construction Contract did not limit the amount of damages that either party could seek against the other party in the event of the other party's default under the contract. A obtained an opinion of counsel that the Construction Contract is binding under applicable state law.

The Facility was also constructed with equipment that can be disassembled and moved to another site to take advantage of other supplies of coal, potential customers or other business reasons. The Facility's equipment consists primarily of four processor units which include processing vessels and input and output hoppers (the “Processors”), heaters which heat the oil that is circulated through the processing vessels, and a screw conveyor/conditioner in which a dust control and protective coating agent is applied to the processed coal. P has supplied a detailed description of the process employed at the Facility.

A recognized expert in coal combustion chemistry and analysis performed numerous tests on the coal used at the Facility and has submitted a report concluding that significant chemical changes take place to the coal with the application of the process to the coal.

Prior to P’s acquisition of the Facility from X, the Facility was relocated to a new site. P has represented that following the relocation the fair market value of the original property is more than twenty percent of the Facility’s total value (the cost of the new property plus the value of the original property). In connection with the relocation, X also made certain modifications to the Facility. P has represented that these modifications will not significantly increase the production capacity of the Facility or significantly extend the life of the Facility.

In connection with P’s acquisition of the Facility, P also entered into a number of

Agreements, including a Facilities Operating Agreement (FOSA) that provides for C to manage the day-to-day operation of the Facility for P.

The remaining facts are the same as those stated in the Prior Ruling. The Prior Rulings which you wish to be reconfirmed in this private letter ruling are as follows:

(1) The Construction Contract constitutes a "binding written contract in effect before January 1, 1997," within the meaning of section 45K(f)(1)(A).

(2) P, with the use of the Process, will produce a "qualified fuel" within the meaning of section 45K(c)(1)(C).

(3) Production from the Facility will be attributed solely to P within the meaning of section 45K(a)(2)(B), entitling P to a credit under section 45K for the production of the qualified fuel from the Facility that is sold to an unrelated person.

(4) If the Facility was placed in service prior to July 1, 1998, the relocation of the Facility after the date on which the Facility was first placed in service, or the replacement of parts of the Facility after that date, will not result in a new "placed in service" date for the Facility for purposes of Section 45K provided the fair market value of the original property is more than twenty percent of the Facility's total fair market value at the time of the relocation or replacement.

(5) If the Facility was placed in service prior to July 1, 1998, the described modifications to the Processors in the Facility will not result in a new "placed in service" date for the Facility for purposes of section 45K provided such changes do not significantly increase the production capacity of the Facility or significantly extend the life of the Facility.

The only material factual change that has occurred since the issuance of the Prior Ruling is P's acquisition of the Facility from X as described in the ruling request.

The above rulings are not affected by P's acquisition of the Facility from X as described in the ruling request.

RULING

Consistent with its private letter ruling practice that began in the mid 1990's, the Service, in Rev. Proc. 2001-30, provided that taxpayers must satisfy certain conditions in order to obtain a letter ruling that a solid fuel produced from coal is a qualified fuel under § 29(c)(1)(C) (redesignated as § 45K(c)(1)(C)). Rev. Proc. 2001-30, as modified by Rev. Proc. 2001-34, 2001-1 C.B. 1293. The revenue procedure requires taxpayers to present evidence that all, or substantially all, of the coal used as feedstock undergoes a significant chemical change. To meet this requirement and obtain favorable private

letter rulings, taxpayers provided expert reports asserting that their processes resulted in a significant chemical change.

In Announcement 2003-46, 2003-30 I.R.B. 222, the Service announced that it was reviewing the scientific validity of test procedures and results presented of significant chemical change in expert reports. In Announcement 2003-70, 2003-46 I.R.B. 1090, the Service announced that it had determined that the test procedures and results used by taxpayers were scientifically valid if the procedures were applied in a consistent and unbiased manner. However, the Service concluded that the processes approved under its long standing ruling practice and as set forth in Rev. Proc. 2001-30 did not produce the level of chemical change required by § 29(c)(1)(C) (redesignated as § 45K(c)(1)(C)). Nevertheless, the Service announced that it recognized that many taxpayers and their investors have relied on its long-standing ruling practice to make investments. Therefore, the Service announced that it would continue to issue rulings on significant chemical change, but only under the guidelines set forth in Rev. Proc. 2001-30, as modified by Rev. Proc. 2001-34.

This ruling is provided to P consistent with Announcement 2003-70 and the Service's long-standing ruling practice. Accordingly, based on the expert test results submitted by P, we conclude that the synthetic fuel produced at the Facility using the described process and specified chemical reagents is a solid synthetic fuel produced from coal constituting a "qualified fuel" within the meaning of § 29(c)(1)(C) (redesignated as § 45K(c)(1)(C)). Because P owns the Facility and operates and maintains the Facility through its agent, we conclude that P will be entitled to the § 45K credit for the production of the qualified fuel from the Facility that is sold to an unrelated person.

CONCLUSIONS

Accordingly, based on the representations of P and P's authorized representatives, we reissue the Prior Rulings as follows:

(1) The Construction Contract constitutes a “binding written contract in effect before January 1, 1997,” within the meaning of section 45K(f)(1)(A).

(2) P, with the use of the Process, will produce a “qualified fuel” within the meaning of section 45K(c)(1)(C).

(3) Production from the Facility will be attributed solely to P within the meaning of section 45K(a)(2)(B), entitling P to a credit under section 45K for the production of the qualified fuel from the Facility that is sold to an unrelated person.

(4) If the Facility was placed in service prior to July 1, 1998, the relocation of the Facility after the date on which the Facility was first placed in service, or the

replacement of parts of the Facility after that date, will not result in a new "placed in service" date for the Facility for purposes of Section 45K provided the fair market value of the original property is more than twenty percent of the Facility's total fair market value at the time of the relocation or replacement.

(5) If the Facility was placed in service prior to July 1, 1998, the described modifications to the Processors in the Facility will not result in a new "placed in service" date for the Facility for purposes of section 45K provided such changes do not significantly increase the production capacity of the Facility or significantly extend the life of the Facility.

The conclusions drawn and rulings given in this letter are subject to the requirements that the taxpayer (i) maintain sampling and quality control procedures that conform to ASTM or other appropriate industry guidelines at the facility that is the subject of this letter, (ii) obtain regular reports from independent laboratories that have analyzed the fuel produced in such facility to verify that the coal used to produce the fuel undergoes a significant chemical change, and (iii) maintain records and data underlying the reports that the taxpayer obtains from independent laboratories including raw FTIR data and processed FTIR data sufficient to document the selection of absorption peaks and integration points.

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 § 11.04 of Rev. Proc. 2006-1, 2006-1 I.R.B. 1. However, when the criteria in § 11.06 of Rev. Proc. 2006-1 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 your authorized representative.

Sincerely,

/s/
Joseph H. Makurath
Senior Technician Reviewer, Branch 7
(Passthroughs & Special Industries)