Internal Revenue Service

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Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-106171-07

Date:
May 22, 2007

LEGEND:

P:
A:
B:
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Parent:
D:
E:
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H:
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X:
Date 1:
Date 2:
Date 3:
Date 4:
PLR 1:
PLR 2:
State:
Year 1:

Dear :

This letter responds to a letter dated Date 1 and subsequent correspondence, submitted on behalf of P by its authorized representative, requesting a ruling under section 45K of the Code.

FACTS

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

P received PLR 1 on Date 2 and PLR 2 on Date 3 (Prior Rulings), which ruled on the issues addressed by this letter. P seeks confirmation of the Prior Rulings in light of the use of alternative chemical reagents at three facilities (Facilities) owned by P.

A, B, and C each entered into a separate Construction Contract on Date 4, for the construction of a facility to produce solid synthetic fuel from coal fines. All three Construction Contracts have been assigned to P. The Construction Contracts are valid under state law and each provides for liquidated damages of at least five percent (5%) of the cost of the facility. Each Construction Contract also includes a description of the facility to be constructed, a completion date, and a maximum price.

P is a State limited liability company formed in Year 1 for the purpose of constructing and operating facilities for the production of a solid synthetic fuel from coal. P is classified as a partnership for federal income tax purposes. P is an indirect subsidiary of Parent, which wholly owns P. Parent is the common parent of an affiliated group that joins in the filing of a consolidated federal income tax return on a calendar year basis using the accrual method of accounting.

The members of P are D, E and F, all single member State limited liability companies, each of which is disregarded for federal income tax purposes. D is wholly owned by G. G is owned by two members of Parent's consolidated group: H, a State limited liability company that is wholly owned by member's of Parent's group and classified as a partnership for federal income tax purposes; and I, a subsidiary of Parent. E is wholly owned H. F is wholly owned by J, a State limited liability company that is disregarded for federal income tax purposes. H owns all of the outstanding units of J.

P owns the facilities and X manages the facilities.

P has supplied a detailed description of the process employed at the Facilities and the alternative approved chemical reagents used in the process for the production of Product. As described, each Facility and the process implemented in the Facility, including the alternative approved chemical reagents, meet the requirements of Rev. Proc. 2001-34, 2001-22 I.R.B. 1293.

Recognized experts in coal combustion chemistry have performed numerous tests on the coal used and the Product produced at each Facility and have submitted reports that conclude that significant chemical changes take place with the application of the process to the coal, including the alternative approved chemical reagents. P, with

use of the process, expects to maintain a level of chemical change in the production of synthetic fuel that is determined through similar analysis by experts to be a significant chemical change.

The remaining facts are the same as those stated in the Prior Rulings. The Prior Ruling that you wish to be reconfirmed in this private letter ruling is that P, with use of the process and the chemical reagents described, will produce a "qualified fuel" within the meaning of § 45K(c)(1)(C).

The only material factual change that has occurred since the issuance of the Prior Rulings is the use of alternative approved chemical reagents as described in the ruling request.

The above rulings are not affected by the use of alternative approved chemical reagents as described in the ruling request.

RULING

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 § 48(l) and its regulations is relevant to the interpretation of the term under § 29(c)(1)(C) (redesignated as § 45K(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 § 29 (redesignated as § 45K) 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, 2001-1 C.B. 1163, the Service announced that it will resume issuance of rulings under § 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 § 29(c)(1)(C) (redesignated as § 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 § 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 alternative approved chemical 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 alternative approved chemical reagents described in the request for rulings for each of the Facilities, produces a solid synthetic fuel from coal that constitutes a "qualified fuel" within the meaning of § 45K(c)(1)(C).

CONCLUSION

Accordingly, based on the representations of P and P's authorized representatives, we reissue the Prior Ruling, that P, with use of the process and the chemical reagents described, will produce a "qualified fuel" within the meaning of § 45K(c)(1)(C).

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. 2007-1, 2007-1 I.R.B. 1. However, when the criteria in § 11.06 of Rev. Proc. 2007-1 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)

cc: