Internal Revenue Service

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Person To Contact:
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Date:
October 30, 2007

LEGEND:

Taxpayer	=
Date 1	=
State	=
Member A	=
Member B	=
Parent	=
Subsidiary	=
Year 1	=
a%	=
b%	=
c	=
d	=

Dear :

This letter responds to a letter dated June 19, 2007 and subsequent correspondence, submitted on behalf of Taxpayer and Parent by the authorized representatives, requesting rulings under § 45K (formerly § 29) of the Internal Revenue Code.

The facts as represented are as follows:

Taxpayer received PLR-200430017 (Prior Ruling) on Date 1, which ruled on the issues addressed by this letter. Member A received substantially similar rulings. Taxpayer seeks a confirmation of those rulings in light of the deemed termination of

Taxpayer under § 708(b)(1)(B). Parent seeks substantially identical rulings to those requested by Taxpayer.

Taxpayer is engaged in the production and sale of synthetic fuel to unrelated persons. Taxpayer is a State limited liability company treated as a partnership for federal income tax purposes. Member A owns a% of the membership interests of Taxpayer. Member B owns b% of the membership interests of Taxpayer.

Member A is a State limited liability company wholly owned by Subsidiary. Subsidiary is a State limited liability company wholly owned by Parent. Member A is disregarded as an entity separate from Subsidiary for federal income tax purposes. Subsidiary currently has an election in place to be treated as an association taxable as a corporation for federal income tax purposes.

Subsidiary intends to elect under Treas. Reg. § 301.7701-3(c) to change its entity classification for federal income tax purposes from an association taxable as a corporation to an entity disregarded from its single owner, Parent. The result of such an election is that Subsidiary will be deemed to distribute all of its assets and liabilities, which will include the membership interest in Taxpayer, to its single owner (Parent) in liquidation of the corporation pursuant to § 332 and § 301.7701-3(g)(iii). As a result of the deemed transfer of Subsidiary's a% membership interest in Taxpayer, Taxpayer will be deemed to have been terminated and reconstituted under § 708(b)(1)(B).

In the request for the Prior Ruling, Taxpayer represented that it will not operate the synthetic fuel facility (Facility) in excess of c tons in any tax year, and further that the variable payments made with respect to the acquisition of interests in Taxpayer by Parent and Member B do not exceed 50% of the total purchase price for the interests in Taxpayer on a net present value basis.

For Year 1, Taxpayer proposes to increase the level of production by d tons. The proposed increase in production is attributable to the mechanical availability of the Facility as shown through actual operations, compared to the mechanical availability that was estimated at the time of the request for the Prior Ruling. Taxpayer represents that the increased level of production for Year 1 will not cause the variable payments to exceed 50% of the total purchase price either (i) based on the projections contained in the request for Prior Ruling or (ii) based on the actual payments already made to date and expected to be made for the balance of the year.

Except for Subsidiary's election to change its classification for federal income tax purposes to an entity disregarded from its single owner, and the proposed increased level of production for Year 1, as described in the ruling request and subsequent correspondence, the material facts submitted in the application for Prior Ruling have not changed.

The rulings requested by Taxpayer and Parent are:

(1) A termination of Taxpayer under § 708(b)(1)(B) will not preclude the reconstituted partnership from relying on the rulings in Prior Ruling and from claiming a federal income tax credit under § 45K (formerly § 29) for the production and sale of synthetic fuel to unrelated persons; and

(2) The rulings in Prior Ruling will remain in full force and effect following the deemed liquidation of Subsidiary and resulting termination and the increased level of production as described in the ruling request and subsequent correspondence.

The only factual changes that have occurred since the issuance of Prior Ruling are Subsidiary's election to change its classification for federal income tax purposes to an entity disregarded from its single owner, and the increased level of production for Year 1. The rulings issued in Prior Ruling are not affected by the changed facts, as described in the ruling request and subsequent correspondence.

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)(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 § 708(b)(1)(B) occurring on or after May 9, 1997.

Section 301.7701-3(g)(1)(iii) provides that if an eligible entity classified as an association elects under (c)(1)(i) of this section to be disregarded as an entity separate from its owner, the following is deemed to occur: The association distributes all of its assets and liabilities to its single owner in liquidation of the association. Therefore, as a result of its election, Subsidiary will be deemed to distribute all of its assets and liabilities, including the a% membership interest in Taxpayer, to Parent in liquidation of the corporation under § 301.7701-3(g)(1)(iii). Taxpayer, accordingly, will be deemed to terminate under § 708(b)(1)(B) because there is an exchange of 50 percent or more of the total interest in Taxpayer's capital and profits. As a result of the termination, Taxpayer is deemed to contribute 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 pursuant to § 1.708-1(b)(4).

The § 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, 2001, from facilities placed in service after December 31, 1979, and before January 1, 1990, on property which first began production after January 1, 1980.

The § 45K credit has been extended by Congress four times. The placed-in-service deadline and the period for claiming the § 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).

It is clear from the legislative history of § 44D that Congress intended the credit to apply to facilities placed in service after 1979, and that the placed-in-service deadline in §§ 45K(e)(1)(B) and 45K(f)(1)(A) must be read as applying to when the facility is <u>first</u> placed in service within the applicable dates. The placed-in-service deadlines contained in §§ 45K(e) and 45K(f) focus on the facility, and not the owner of the facility. The legislative history of § 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 tax incentive for production capacity in service before 1980.

Accordingly, the determination of whether a facility has satisfied the placed-in-service deadline under §§ 45K(e)(1)(B) and 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 Taxpayer under § 708(b)(1)(B) will not preclude the reconstituted partnership from claiming the § 45K credit on the production and sale of synthetic fuel to unrelated persons. We further conclude that the rulings in Prior Ruling will remain in full force and effect following the deemed liquidation of Subsidiary and resulting termination of Taxpayer and the increased level of production for Year 1.

The conclusions drawn and rulings given in this letter are subject to the requirements that taxpayer (i) maintain sampling and quality control procedures that conform to ASTM or other appropriate industry guidelines at the facilities that are the subject of this letter, (ii) obtain regular reports from independent laboratories that have

analyzed the fuel produced in such facilities 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 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,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs and Special Industries)