Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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PLR-146965-07

Date:
March 04, 2008

LEGEND:

Taxpayer	=
Date 1	=
State	=
Parent	=
Company A	=
Company B	=
Reagent A	=
Reagent B	=

Dear :

This letter responds to a letter dated October 16, 2007, requesting a confirmation of prior rulings under § 45K, formerly § 29, of the Internal Revenue Code.

The facts as represented are as follows:

On Date 1, Taxpayer received PLR-129691-07 (Prior Ruling). Taxpayer seeks a confirmation of the rulings in Prior Ruling in light of a proposed changed circumstance.

Taxpayer is a State corporation and an indirect wholly owned subsidiary of Parent, a publicly traded corporation. Taxpayer owns all of the membership interests of Company A, a State limited liability company. Taxpayer has represented that Company A is disregarded as an entity separate from Taxpayer for federal income tax purposes. Taxpayer owns all of the membership interests of Company B, a State limited liability company. Taxpayer has represented that Company B is disregarded as an entity separate from Taxpayer for federal income tax purposes. Company A is the current

owner of one synthetic fuel production facility (Facility 1) and Company B is the current owner of a second synthetic fuel production facility (Facility 2 and together with Facility 1, the Facilities).

Taxpayer is engaged in the production and sale of synthetic fuel to unrelated persons through the Facilities. The Facilities produce synthetic fuel from coal using a process (Process) involving the combination of feedstock coal with a chemical reagent. In the application for Prior Ruling, Taxpayer stated that the chemical reagent being used in Process was Reagent A. Because of a shortage of available Reagent A, Taxpayer has begun to use Reagent B for producing synthetic fuel at Facility 1. Reagent B is a latex-based chemical reagent.

A recognized expert in coal combustion chemistry and analysis performed tests on the coal used at Facility 1 and has submitted reports concluding that significant chemical changes take place to the coal with the application of Process using Reagent B.

Except for the change in chemical reagents, the material facts submitted in the application for Prior Ruling have not changed.

Taxpayer requests a ruling confirming that Taxpayer's use of Reagent B at Facility 1 will not affect the rulings set forth in Prior Ruling and those rulings will remain in full force and effect.

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 are relevant to the interpretation of the term under § 45K(c)(1)(C), formerly § 29(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 former § 29 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).

The expert report provided by Taxpayer concludes that synthetic fuel produced using coal feedstock to be used for processing at Facility 1 and Reagent B differed significantly in chemical composition, as opposed to physical composition from the feedstock coal from which it was produced. Accordingly, Taxpayer's use of Reagent B will not affect the rulings set forth in Prior Ruling and those rulings will remain in full force and effect.

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. 2008-1, 2008-1 I.R.B. 1. However, when the criteria in § 11.06 of Rev. Proc. 2008-1 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,

Joseph H. Makurath
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs and Special Industries)