Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:PSI:B07 – PLR-155257-02

Date:
November 5, 2003

Re:

LEGEND:

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Dear :

This letter responds to a letter dated October 3, 2002, and subsequent correspondence, submitted on behalf of P by its authorized representative, requesting rulings under sections 29 and 702 of the Internal Revenue Code.

FACTS

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

P is a limited partnership organized under the laws of State A. A owns a 0.1 percent general partner interest in P, B owns a 49.95 percent limited partner interest in P, and C owns a 49.95 percent limited partner interest in P. B and C are indirect subsidiaries of D and are members of the affiliated group of corporations filing a consolidated return of which D is the common parent. P is the sole owner of E, which is treated as a disregarded entity for federal income tax purposes.

Effective on Date 2, P purchased a synthetic fuel manufacturing facility (Facility) from J in exchange for (i) a cash down payment of $A, (ii) a promissory note that requires payments over time, and (iii) the assumption of certain liabilities of J. The promissory note has a fixed component, which may be revised after 24 months to take into account P's actual rate of synthetic fuel production, and a contingent component, which is based on section 29 credits generated by P. The promissory note and the assumed obligations are described in P's ruling request.

P represents that, based on the expected production level of the Facility on Date 1, the net present value of the cash, the assumed obligations, and the payments under the fixed component of the promissory note will exceed 50 percent of the net present value of the total consideration projected to be paid by P to J for the purchase of the Facility.

The Facility was constructed pursuant to a construction contract, dated Date 3, that was assigned to H. The construction contract includes a description of the Facility to be constructed, a completion date, and a price. The construction contract does not provide for liquidated damages. P has provided an opinion of counsel that the construction contract was binding and enforceable under applicable state law as of Date 3. On Date 4, J purchased all of the member interests in H, and H became treated as a disregarded entity for federal income tax purposes.

The Facility is designed to be moveable so it can be relocated to a new site as needed. The Facility originally was constructed at a coal preparation and wash plant located at Site Y. P represents that the Facility was in a condition or state of readiness and availability for its specifically assigned function and was operational before July 1, 1998. P relocated the Facility to a parcel of land at Site Z.

The Facility consists of three lines for the production of solid synthetic fuel from coal. Each of the Facility's three production lines includes a 7-ton surge bin with a screw

feeder, a process feed belt, a screw conveyor, a conditioner/mixer, and a pellet mill, which comprise the essential components of the Facility. A number of modifications have been made to the Facility and its related equipment at various times after June 30, 1998. The Facility and the modifications to the Facility and its related equipment are described in P's ruling request. P represents that the modifications did not change the actual synthetic fuel production system in any material way and that the essential components of each of the Facility's three production lines were retained in connection with the relocation. P also represents that the modifications to the Facility and the process will not lead to any significant increase in the production from the Facility over the production achievable prior to such modifications.

In the ruling request, P represents that the fair market value of the original property incorporated into the relocated Facility is more than 20 percent of the Facility's total fair market value immediately following the relocation or replacement (i.e., the cost of the new or replacement property included in the Facility plus the value of the original property).

P anticipates that the expenses of producing and selling synthetic fuel (including the cost of coal feedstock) will exceed related revenues on an economic basis, and P will claim depreciation and amortization deductions with respect to its investment in the Facility. Thus, P anticipates that the operation of the Facility will generate a net loss for federal income tax purposes.

The Limited Partnership Agreement of P requires each partner to make monthly capital contributions based on the amount of section 29 credits allocated to such partner to fund operating losses and to satisfy P's obligations, including the assumed obligations and the promissory note. In addition, following the receipt of this letter ruling, each partner is required to make an additional one-time capital contribution based on the amount of section 29 credits previously allocated to such partner. Subject to certain special allocations intended to comply with the regulations under section 704, the partnership agreement allocates profits and losses (including depreciation and amortization deductions) and credits to the partners in accordance with their percentage interests in P.

P entered into a Lease Agreement with K, an affiliate of L and M, pursuant to which P pays a fixed fee annually to lease a parcel of land at Site Z and acquire certain easements for the relocation, reassembly, and operation of the Facility, and the processing of coal feedstock to produce synthetic fuel.

P entered into a Facility Operating Agreement with N, an affiliate of K, for the operation and maintenance of the Facility. Under this agreement, N provides workers and certain services and equipment to P for a fixed fee per ton of synthetic fuel meeting certain standards.

P entered into an Exclusive Coal Feedstock Supply Agreement appointing K as its exclusive supplier of coal feedstock. The price per ton of coal feedstock is K's actual

cost (plus any transportation costs) plus a fixed supply fee per ton. P’s coal feedstock will consist of coal fines or crushed coal comprised of particles the majority of which, by weight, are no larger than 3/8 inch.

P entered into an Exclusive Agreement for the Marketing of Synthetic Fuel with K. Under this agreement, K will act as P’s agent for marketing all the synthetic fuel produced by the Facility. P will pay K a fixed fee per ton of synthetic fuel sold as a result of K’s efforts, adjusted for a premium or penalty based upon the average price of synthetic fuel sales.

P entered into a Technology License Agreement with G, pursuant to which P acquired a limited license to use G’s proprietary process to produce synthetic fuel in exchange for a royalty based upon P’s synthetic fuel production and sales, as described in P’s ruling request. P also entered into a Proprietary Reagent Supply Agreement with G, pursuant to which P will purchase its requirements of chemical reagent for use in the production of synthetic fuel. Although G is the exclusive supplier, P may purchase chemical reagent from an alternative supplier if G cannot satisfy P’s requirements or if the chemical reagents supplied by G are not effective to create a chemical change to the particular coal feedstock.

F will provide management, administrative, and technical services to P (and E) in exchange for a fixed monthly fee plus a fixed fee per ton of qualified fuel sold during the applicable month.

P’s ruling request contains a detailed description of the process employed at the Facility. As described, the Facility and the process, including the feedstock and chemical reagent used to produce the synthetic fuel, meet the requirements of Rev. Proc. 2001-34, 2001-22 I.R.B. 1293.

Recognized experts in coal combustion chemistry performed numerous tests on the coal used at the Facility and the synthetic fuel product produced at the Facility and submitted reports concluding that significant chemical changes occur in the chemical composition of the resulting synthetic fuel compared to the untreated coal feedstocks. These reports are included in P’s ruling request and subsequent correspondence from P’s authorized representative.

The rulings requested by P are as follows:

(1) P, by using the process and chemical reagent described in P’s ruling request in the Facility, produces a solid synthetic fuel from coal that constitutes a “qualified fuel” within the meaning of section 29(c)(1)(C);

(2) All production of qualified fuel from the Facility will be attributable solely to P within the meaning of section 29(a)(2)(B), and P, and therefore its partners, will be entitled to all section 29 credits from the production of qualified fuel from the Facility that is sold to unrelated persons before January 1, 2008;

(3) The contract for construction of the Facility constitutes a “binding written contract” in effect before January 1, 1997, within the meaning of section 29(g)(1)(A);

(4) The Facility was “placed in service” for purposes of section 29(g)(1) on the date that the Facility was 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;

(5) Provided the Facility was “placed in service” prior to July 1, 1998, within the meaning of section 29(g)(1), neither the relocation of the Facility to Site Z nor the replacement of parts of the Facility described in P’s ruling request will result in a new placed-in-service date for the Facility for purposes of section 29 or otherwise prevent the Facility from continuing to be treated as placed in service. In addition, subsequent relocations of the Facility to different sites or the replacement of parts of the Facility will not result in a new placed-in-service date for the Facility for purposes of section 29 or otherwise prevent the Facility from continuing to be treated as placed in service if the fair market value of the original property is more than 20 percent of the Facility’s total fair market value immediately following the relocation or replacement (i.e., the cost of the new or replacement property included in the Facility plus the value of the original property);

(6) The credits allowed under section 29 may be passed through to and allocated among all the partners of P under the principles of section 702(a)(7) in accordance with each partner’s interest in P as of the time the credit arises. For purposes of the section 29 credit, a partner’s interest in P is determined based upon a valid allocation of the receipts from the sales of the section 29 credit qualified fuel, which is the same as the allocation of gross income or loss from the sales of such qualified fuel;

(7) Provided the Facility was “placed in service” prior to July 1, 1998, within the meaning of section 29(g)(1), the Facility will continue to be treated as placed in service before July 1, 1998, if sold to a new owner after such date; and

(8) A termination of P under section 708(b)(1)(B) will not affect the date the Facility was placed in service for purposes of section 29 or otherwise preclude the reconstituted partnership from claiming section 29 credits for the production and sale of qualified fuel from the Facility to unrelated persons.

RULING REQUESTS #1 & #2

Section 29(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 29(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). 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 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).

Based on the information submitted by 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 Facility as described in P’s ruling request and subsequent correspondence will result in a significant chemical change to the coal, transforming the coal into a solid synthetic fuel that constitutes a “qualified fuel” within the meaning of section 29(c)(1)(C). Because P owns the Facility and operates and maintains the Facility through its agent, we conclude that all production of qualified fuel from the Facility will be attributable solely to P within the meaning of section 29(a)(2)(B) and P, and therefore its partners, will be entitled to the section 29 credit for the production of the qualified fuel from the Facility that is sold to an unrelated person.

RULING REQUEST #3

Sections 29(f)(1)(B) and (f)(2) provide that section 29 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 29(g)(1) modifies section 29(f) in the case of a facility producing qualified fuels described in section 29(c)(1)(C). Section 29(g)(1)(A) provides that for purposes of section 29(f)(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 29(g)(1)(B) provides that if the facility is originally placed in service after December 31, 1992, section 29(f)(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, includes such essential features as a description of the facility to be constructed, a completion date, and a maximum price. In addition, the contract does not limit damages to a specified

amount. P provided an opinion of counsel that the contract is binding under applicable state law prior to January 1, 1997. Therefore, we conclude that the Facility was constructed pursuant to a binding written contract for purposes of section 29(g)(1)(A).

RULING REQUESTS #4 & #5

Sections 29(f)(1)(B) and (f)(2) provide that section 29 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 29(g)(1) modifies section 29(f) in the case of a facility producing qualified fuels described in section 29(c)(1)(C), which qualified fuels include solid synthetic fuels produced from coal or lignite. Section 29(g)(1)(A) provides that for purposes of section 29(f)(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 29(g)(1)(B) provides that if the facility is originally placed in service after December 31, 1992, section 29(f)(2) shall be applied by substituting "January 1, 2008" for "January 1, 2003."

To qualify for the section 29 credit, P's Facility must be placed in service before July 1, 1998, pursuant to a binding written contract in effect before January 1, 1997. While section 29 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.

We conclude that the Facility was "placed in service" for purposes of section 29(g)(1) on the date the Facility was first placed in a condition or state of readiness and availability to produce a solid synthetic fuel from coal.

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 P's Facility was "placed in service" prior to July 1, 1998, within the meaning of section 29(g)(1), relocation of P's Facility after June

30, 1998, or replacement of parts of the Facility after that date, will not result in a new placed in service date for the Facility for purposes section 29 or otherwise prevent the Facility from continuing to be placed in service if the fair market value of the original property is more than 20 percent of the Facility's total fair market value at the time of relocation or replacement. When property is placed in service is a factual determination, and we express no opinion on when P's Facility was placed in service.

Rev. Rul. 94-31 describes a windfarm that consists of an "array of wind turbines, towers, pads, transformers, roadways, fencing, on-site power collection systems, and monitoring and meteorological equipment." Notwithstanding that the windfarm consisted of all of these items, the ruling concludes that the "facility" for purposes of section 45 is confined to "the property on the windfarm necessary for the production of electricity from wind energy." (emphasis added.)

The present situation is similar to Rev. Rul. 94-31. Thus, for purposes of determining the Facility's total fair market value at the time of relocation or replacement, the Facility consists of the process equipment directly necessary for the production of the qualified fuel, starting at the immediate input of the coal and chemical reagents to the pug mills or mixers (including any coal hoppers and reagent tanks directly feeding the pug mills or mixers) through the output from the pellet mills or other forming equipment (including output hoppers, if any). Hence, the Facility's total fair market value includes the process equipment such as the mixers, the pellet mills, the equipment necessary to interconnect such equipment, the electrical, instrumentation, control systems and auxiliaries related to such equipment (including the structures that house such electrical, instrumentation and control systems), the foundation platform(s) for the above-referenced equipment, and an appropriate allocation of the engineering, project management, overhead, and other costs assignable to the relocation of such equipment and construction. The Facility's total fair market value does not include costs associated with the purchase and installation of equipment that supports the operation of the Facility but is not directly necessary for the production of the qualified fuel, such as coal beneficiation or preparation equipment (e.g., crushers, screens, dryers, or scales), other material handling or conveying equipment (e.g., stacking tubes, transfer towers, storage bunkers, mobile equipment, hoppers, or conveyors), certain site improvements (e.g., fencing, lighting, earthwork, paving), separate office and bathhouse trailers for facility personnel, and buildings (if a "building" for purposes of Section 168 of the Code).

Sampling and quality control may be necessary for operational control of a production facility. However, a particular type of sampling equipment generally is not necessary for the production of qualified fuel. Thus, the costs of sampling equipment are excluded from the Facility's total fair market value unless the particular sampling equipment is necessary for operational control of the Facility.

RULING REQUEST #6

Under section 7701(a)(14), the term "taxpayer" means any person subject to any internal revenue tax. Section 7701(a)(1) provides that the term "person" includes 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. Under section 1.702-1(a) of the Income Tax Regulations, 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 (i) the partnership agreement does not provide for the partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) or (ii) the allocation to a partner under the agreement of income, gain, loss, deduction, or credit (or item thereof) lacks substantial economic effect.

Under section 1.704-1(b)(4)(ii), 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 tax credit recapture arises. If a partnership expenditure (whether or not deductible) that gives rise to a tax credit in a partnership taxable 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 regarding the 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, of the Income Tax Regulations. Identical principles apply in determining the partners' interests in the partnership regarding 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 the section 29 credit attributable to P may be passed through to, and allocated to, the partners of P under principles of section 702(a)(7) in accordance with each partner's interest in P when the credit arises. For the section 29 credit, a partner's interest in P is determined based on a valid allocation of the receipts from the sale of the section 29 qualified fuel.

RULING REQUEST #7

The section 29 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 section 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 which first began production after January 1, 1980.

The section 29 credit has been extended by Congress four times. The placed-in-service deadline and the period for claiming the section 29 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 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 29(f)(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 sections 29(f) and 29(g) 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 tax incentives for production capacity in service before 1980.

Section 29(g)(2) demonstrates that Congress knows how to preclude transferees of facilities from claiming the section 29 credit. That provision provides that 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 29(f)(1)(B) or 29(g)(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 P’s Facility was “placed in service“ prior to July 1, 1998 within the meaning of section 29(g)(1), the sale of the Facility after June 30, 1998, will not result in a new placed in service date for the Facility for purposes of section 29 for the new owner. When property is placed in service is a factual determination, and we express no opinion on when P’s Facility was placed in service.

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 deadlines in sections 29(f)(1)(B) and 29(g)(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 sections 29(f)(1)(B) and 29(g)(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 sections 29(f)(1)(B) and 29(g)(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 29 credit on the production and sale of synthetic fuel to unrelated persons.

CONCLUSIONS

Accordingly, based on the information submitted and the representations made, we conclude as follows:

(1) P, by using the process and chemical reagent described in P’s ruling request in the Facility, produces a solid synthetic fuel from coal that constitutes a “qualified fuel” within the meaning of section 29(c)(1)(C);

(2) All production of qualified fuel from the Facility will be attributable solely to P within the meaning of section 29(a)(2)(B), and P, and therefore its partners, will be entitled to all section 29 credits from the production of qualified fuel from the Facility that is sold to unrelated persons before January 1, 2008;

(3) The contract for construction of the Facility constitutes a “binding written contract” in effect before January 1, 1997, within the meaning of section 29(g)(1)(A);

(4) The Facility was “placed in service” for purposes of section 29(g)(1) on the date that the Facility was 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;

(5) Provided the Facility was “placed in service” prior to July 1, 1998, within the meaning of section 29(g)(1), neither the relocation of the Facility to Site Z nor the replacement of parts of the Facility described in P’s ruling request will result in a new placed-in-service

date for the Facility for purposes of section 29 or otherwise prevent the Facility from continuing to be treated as placed in service. In addition, subsequent relocations of the Facility to different sites or the replacement of parts of the Facility will not result in a new placed-in-service date for the Facility for purposes of section 29 or otherwise prevent the Facility from continuing to be treated as placed in service if the fair market value of the original property is more than 20 percent of the Facility's total fair market value immediately following the relocation or replacement (i.e., the cost of the new or replacement property included in the Facility plus the value of the original property);

(6) The credits allowed under section 29 may be passed through to and allocated among all the partners of P under the principles of section 702(a)(7) in accordance with each partner's interest in P as of the time the credit arises. For purposes of the section 29 credit, a partner's interest in P is determined based upon a valid allocation of the receipts from the sales of the section 29 credit qualified fuel, which is the same as the allocation of gross income or loss from the sales of such qualified fuel;

(7) Provided the Facility was "placed in service" prior to July 1, 1998, within the meaning of section 29(g)(1), the Facility will continue to be treated as placed in service before July 1, 1998, if sold to a new owner after such date; and

(8) A termination of P under section 708(b)(1)(B) will not affect the date the Facility was placed in service for purposes of section 29 or otherwise preclude the reconstituted partnership from claiming section 29 credits for the production and sale of qualified fuel from the Facility to unrelated persons.

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 section 12.04 of Rev. Proc. 2003-1, 2003-1 I.R.B. 1, 50. However, when the criteria of section 12.05 of Rev. Proc. 2003-1 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 P's authorized representative.

Sincerely,
Joseph H. Makurath
Senior Technician Reviewer, Branch 7
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:
Copy for section 6110 purposes

cc: