

**INTERNAL REVENUE SERVICE**  
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

December 22, 2003

Number: **200417005**  
Release Date: 4/23/04  
Third Party Contact: None  
Index (UIL) No.: 4121.00-00  
CASE-MIS No.: TAM-139409-03/ CC:PSI:B8

Taxpayer's Name:  
Taxpayer's Address:

Taxpayer's Identification No  
Years Involved:  
Date of Conference:

LEGEND:

Taxpayer =  
X =  
A =  
B =  
C =

ISSUE(S):

Was coal that was sold by Taxpayer and processed at A in the stream of export when sold by Taxpayer?

CONCLUSION(S):

Coal sold by Taxpayer and processed at A was in the stream of export when sold by Taxpayer.

FACTS:

Taxpayer is a producer of coal that is exported. Taxpayer sold coal to X, a broker. X operated three coal preparation plants, A, B, and C, that processed coal produced by numerous coal producers, including Taxpayer. However, the coal

processed at A was almost exclusively coal produced by Taxpayer. Taxpayer and other producers supplying coal to A, B, and C were contacted daily by the managers of A, B, and C to discuss the coordination of raw coal deliveries from various mines based on the quality and quantity needs of X's customers. Taxpayer sold coal to X for processing at A in accordance with the contract specifications of X's foreign customers. Taxpayer never shipped raw coal directly to X's foreign customers.

From the tax quarter ending \_\_\_\_\_ through the tax quarter ending \_\_\_\_\_, Taxpayer reported on Form 720, Quarterly Federal Excise Tax Return, and paid the applicable excise tax on all coal sales to X. Taxpayer claimed a refund of taxes paid on coal sold to X that was exported by X. From the tax quarter ending \_\_\_\_\_ through the tax quarter ending \_\_\_\_\_, Taxpayer excluded from the coal reported on Form 720 the coal sold to X that was exported by X.

During consideration of this technical advice memoranda, Taxpayer conceded that coal processed at B and C and coal placed in stockpiles for future use at A were not in the stream of export when sold. As such, the coal at issue in this technical advice memoranda is the coal that was delivered by Taxpayer to A, dumped into an underground hopper, fed from the underground hopper into a silo, belted into the processing plant where rocks and impurities were removed, belted into railcars for shipment to customers, and actually exported. Also during consideration of this technical advice memorandum, Taxpayer submitted documentation that the IRS had not previously reviewed. The IRS has since reviewed the documents provided by Taxpayer.

#### LAW AND ANALYSIS:

Section 4121 of the Code imposes a tax on coal from mines located in the United States sold by the producer.

The Export Clause of the United States Constitution, art. I, §9, cl.5, provides "no Tax or Duty shall be laid on Articles exported from any State."

Notice 2000-28, 2000-1 C.B. 1116, provides guidance relating to coal exports and the rules for making a nontaxable sale of coal for export or obtaining a credit or refund when tax has been paid on the nontaxable sale of coal for export. In both cases, the coal must have been in the stream of export when sold by the producer and the coal must have been actually exported. Notice 2000-28 provides that coal is in the stream of export when it is sold by the producer if the sale is a step in the exportation of the coal to its ultimate destination in a foreign country. For example, coal is in the stream of export when it is loaded on an export vessel and title is transferred from the producer to a foreign purchaser, or when the producer sells the coal to an export broker in the

United States under terms of a contract showing that the coal is to be shipped to a foreign country.

The IRS has concluded that the documentation provided by Taxpayer during consideration of this technical advice memoranda supports a determination that the coal processed at A and actually exported was in the stream of export when sold by Taxpayer. The documentation provided by Taxpayer allowed the coal to be traced from the mine, through processing at A, and onto railcars designated for shipment to a foreign country.

CAVEAT(S):

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.