

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:6 GENIN-101653-06

Date:

March 23, 2006

Re:

Dear :

This letter is in response to your letter dated December 26, 2005, requesting that: (1) we provide you with a copy of a private letter ruling issued to a specific taxpayer, providing that this taxpayer was entitled to claim the credit under former section 29 of the Internal Revenue Code; and (2) we provide you with the procedures for applying for the credit under section 45K of the Code.

We hope that you find the following general information to be helpful with respect to your requests.

As to the first request, you should request a copy of a private letter ruling issued by the Internal Revenue Service by following the procedures outlined in the Freedom of Information Act ("FOIA"), 5 USC § 552, and section 601.702(c) of the Income Tax Regulations. Your initial FOIA request must: (1) be made in writing and signed by you; (2) state that it is made pursuant to the FOIA, 5 U.S.C. 552, or the regulations under the FOIA; (3) be addressed to and mailed to the office listed section 601.702(h) that is responsible for the control of the records requested; (4) reasonably describe the records in accordance with section 601.702(c)(5)(i); (5) because you are requesting a document the disclosure of which is limited by statute or regulations, establish the identity and the right of the person making the request to the disclosure of the records in accordance with section 601.702(c)(5)(iii); (6) set forth the address where the person making the request desires to

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be notified of the determination as to whether the request is granted; (7) state whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them; and (8) state the firm agreement of the requester to pay the fees for search, duplication, and review ultimately determined in accordance with section 601.702(f), or, in accordance with section 601.702(c)(4)(ii), place an upper limit for the fees that the requester is willing to pay, or request that the fees be reduced or waived and state the justification for this request. Section 601.702(c)(4). Enclosed is a copy of section 601.702(c)(4), (c)(5), (f), and the relevant language in (h).

As to the second request, if a taxpayer wants a ruling that it qualifies for the section 45K credit, the taxpayer may request a private letter ruling. Rev. Proc. 2006-1, 2006-1 I.R.B. 1, provides the general procedures the Service follows in issuing private letter rulings and the related instructions for the submission of private letter ruling requests by taxpayers. In addition, taxpayers are required by statute to pay user fees for requests for private letter rulings. Under section 15 of Rev. Proc. 2006-1, 2006-1 I.R.B. at 54, the user fee must accompany the request in order to be processed by the Service. In general, the user fee is \$7,000 for private letter ruling requests postmarked before February 1, 2006, and \$10,000 for private letter ruling requests postmarked on or after February 1, 2006. However, there is a reduced fee of \$625 for a request involving a personal or business tax issue from a person with a gross income of less than \$250,000. There is also a reduced fee of \$625 (or \$2,500, if the request is postmarked on or after February 1, 2006) for a request involving a personal or business tax issue from a person with gross income of less than \$1 million and more than \$2,500. See Appendix A of Rev. Proc. 2006-1, 2006 I.R.B. at 66.

The Energy Policy Act of 2005, Pub. L. 109-58, 119 STAT. 594 (August 8, 2005) redesignated section 29 as section 45K. Section 45K(a) provides that, for purposes of section 38, the nonconventional source production credit determined under this section for the taxable year is an amount equal to: (1) \$3, multiplied by (2) the barrel-of-oil equivalent of qualified fuels (A) sold by the taxpayer to an unrelated person during the taxable year, and (B) the production of which is attributable to the taxpayer. Section 45K(b) provides rules regarding limitations on and adjustments to the credit determined under section 45K(a). Section 45K(c) and (d) provides definitions and special rules for purposes of section 45K. Section 45K(e) provides rules governing the applicability of section 45K. Section 45K(f) and (g) provides extensions for certain facilities. Generally, except for facilities producing coke and coke gas, the credit under section 45K is only available for production from facilities placed in service before July 1, 1998, pursuant to a binding written contract in effect before January 1, 1997 (§ 45K(f) and (g)). Enclosed is a copy of section 45K of the Code and a copy of Form 8907, which is used to claim the nonconventional source fuel credit.

If you should decide to request a private letter ruling, section 7.03(1) of Rev. Proc.

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2006-1, 2006-1 I.R.B. at 25-26, provides information as to where to send the request. Also, as we have noted above, section 7 of Rev. Proc. 2006-1, 2006 I.R.B. at 16, provides general instructions for requesting a private letter ruling.

This letter has called your attention to certain general principles of tax law. It is intended for informational purposes only and does not constitute a ruling. See section 2.04 of Rev. Proc. 2006-1, 2006 I.R.B. at 7. If you should have any additional questions or comments, please contact me or _____ at () _____.

Sincerely yours,

/s/ Charles B. Ramsey

CHARLES B. RAMSEY
Chief, Branch 6
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures