



OFFICE OF
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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

January 12, 2010

Number: **INFO 2010-0037**
Release Date: 3/26/2010

CONEX-154435-09
UIL: 45.00-00

The Honorable Lindsey O. Graham
United States Senate
Washington, DC 20510

Attention:

Dear Senator Graham:

I am responding to your inquiry dated December 15, 2009, on behalf of your constituent,

to provide large-scale biomass fuel sourcing and future domestic power generation. request cash payments for investments made in their biomass fuel production facilities under section 1603 of the American Recovery and Reinvestment Act of 2009 (ARRA).

Under section 1603 of ARRA, a taxpayer may apply for and receive from the Department of Treasury a cash payment for 30 percent of the cost of a qualifying open-loop biomass facility. The Treasury Department defines a qualifying open-loop biomass facility in the section 1603 Program Guidance, available at the website, www.treas.gov/recovery/1603.shtml, to include a facility that uses open-loop biomass to produce electricity.

Section 1603 of ARRA uses the definition of a qualifying open-loop biomass facility in section 45 of the Internal Revenue Code (the Code). Section 45(d)(3) of the Code requires an open-loop biomass facility to produce electricity to qualify for the production tax credit.

wrote that section 45(d)(3)(C) provides an exception to the requirement that a qualifying open-loop biomass facility produce electricity, and that the Treasury Department's application of the Program Guidance is discretionary. Section 45(d)(3)(C) provides:

(C) Credit Eligibility. In the case of any facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible

for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

This section merely allows the lessee or operator of a qualifying open-loop biomass facility, instead of the owner, to receive the production tax credit. The term, "such facility" in section 45(d)(3)(C), means a facility that produces electricity and does not include a facility that only produces open-loop biomass fuel. The requirement that a qualifying open-loop biomass facility produces electricity is based on the language of the statute and is not discretionary.

I hope this information is helpful. If you have any questions, please contact me or
at for further assistance.

Sincerely,

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