

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B07
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Date:
July 14, 2010

TY:

Legend

Taxpayer =
Subsidiary =

Dear :

This document replies to a letter ruling request dated April 28, 2010, submitted on your behalf by your authorized representative, regarding the application of the § 40(b)(6) cellulosic biofuel producer credit of the Internal Revenue Code (the Code). You request a ruling regarding the application of this credit to “black liquor” produced by your Subsidiary. Specifically, you request a ruling that the black liquor produced and used as a fuel by Subsidiary during calendar year 2009 is cellulosic biofuel within the meaning of § 40(b)(6)(E).

FACTS

During calendar year 2009, Taxpayer owned Subsidiary, a pulp mill located in the United States that uses the semi-chemical pulping process to convert wood chips into pulp for paper production. In this process, wood chips are “cooked” with a water-based solution of inorganic chemicals at elevated temperatures to weaken the bonds between cellulose and lignin. During the “cooking,” the inorganic chemicals bond to the lignin and the cellulose is extracted for further processing as pulp for paper. The by-product of this process, black liquor, is an aqueous solution consisting of lignin residues, hemicelluloses, and various inorganic chemicals. The black liquor is further processed to remove much of the water content and then used as a fuel source in a recovery boiler

that produces steam used by the pulp mill. Before being used as a fuel, the black liquor is temporarily stored in tanks.

Neither Taxpayer nor Subsidiary has claimed any credits or payments under § 6426, 6427, or 34 relating to the production, sale, or use of the black liquor. Subsidiary submitted an application to the Internal Revenue Service (IRS) to be registered by the IRS as a producer of cellulosic biofuel (the "CB" activity letter suffix) on Form 637, Application for Registration (For Certain Excise Tax Activities).

LAW & ANALYSIS

Sections 40(a)(4) and 40(b)(6)¹ of the Code, as in effect for the periods at issue, allow a nonrefundable income tax credit to the registered producer of cellulosic biofuel for each gallon of cellulosic biofuel it produces in the United States and sells for use or uses in a trade or business in the United States. Section 40(b)(6)(E)(i) defines cellulosic biofuel to mean any liquid fuel that: (I) is produced from any lignocellulosic or hemicellulosic material that is available on a renewable or recurring basis, and (II) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency (EPA) under section 211 of the Clean Air Act (42 U.S.C. 7545).

Black liquor is a liquid fuel produced from wood, which is a lignocellulosic or hemicellulosic material that is available on a renewable or recurring basis. Thus, black liquor meets the requirement of § 40(b)(6)(E)(i)(I).

Section 40(b)(6)(E)(i)(II) requires fuel to "meet" EPA's registration requirements for fuel and fuel additives under section 211 of the Clean Air Act. The IRS has generally determined that fuel meets EPA's registration requirements if the EPA does not require the fuel to be registered. EPA requires registration only of motor vehicle fuels and fuel additives. Thus, because black liquor is not a motor vehicle fuel or fuel additive, black liquor "meets" EPA's registration requirements for purposes of § 40(b)(6)(E)(i)(II).

Because black liquor meets both parts of the definition of cellulosic biofuel, black liquor that is produced before January 1, 2010, is cellulosic biofuel under § 40(b)(6)(E).

¹ The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152) (the Reconciliation Act) amends the definition of cellulosic biofuel, effective for fuels sold or used after December 31, 2009. The technical explanation (JCX-18-10, Technical Explanation of the Revenue Provisions of the "Reconciliation Act of 2010," as Amended, in Combination with the "Patient Protection and Affordable Care Act", March 21, 2010) to the revenue provisions of the Reconciliation Act states that as a result of the amendment, the cellulosic biofuel producer credit "cease[s] to be available" for "fuels containing significant water, sediment, or ash content, such as black liquor."

For the cellulosic biofuel producer credit to be allowed, the provisions of § 40(b)(6)(G), relating to registration requirements, must be met.

CONCLUSION

The black liquor produced and used as a fuel during calendar year 2009 is cellulosic biofuel as defined in § 40(b)(6)(E) of the Code, as in effect during the period at issue. Thus, the credit is allowable if the requirements of § 40(b)(6)(G) are met.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Frank K. Boland
Chief, Branch 7
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

cc: