

INTERNAL REVENUE SERVICE  
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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CASE MIS No.: TAM-109462-99/CC:DOM:P&SI:B7

District Director

Taxpayer's Name:  
Taxpayer's Address:

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

LEGEND:

Taxpayer =

A =

a =

b =

c =

d =

e =

ISSUE:

Does § 29(c)(2)(C) of the Internal Revenue Code "reinstate" the § 29 credit for any gas from a tight formation that was committed or dedicated to interstate commerce as of April 20, 1977, or only for gas from a tight formation that was not subject to decontrol under the Natural Gas Policy Act of 1978 (NGPA)?

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## CONCLUSION:

Section 29(c)(2)(C) “reinstates” the § 29 credit for any gas from a tight formation that was committed or dedicated to interstate commerce as of April 20, 1977, without regard to whether the gas was subject to decontrol under the NGPA.

## FACTS:

Taxpayer, a subsidiary of A, claimed § 29 credits on its income tax returns for a, b, and c for two wells producing gas from tight formations in amounts totaling d and e, respectively. On audit, the wells were verified using a database to ascertain whether the Federal Energy Regulatory Commission had determined that they were producing gas from a tight formation. In addition, the gas sales contracts were verified to insure that the gas was committed or dedicated to interstate commerce as of April 20, 1977. Both wells were categorized as § 102(3) and § 107(6) wells under the NGPA. Although gas from both wells was committed or dedicated to interstate commerce as of April 20, 1977, the price of the produced gas was decontrolled under the NGPA.

## LAW AND ANALYSIS:

Section 29(a) provides a credit for qualified fuels sold by the taxpayer to an unrelated person during the taxable, and the production of which is attributable to the taxpayer.

Section 29(c)(1)(B)(i) defines the term “qualified fuels” to include gas produced from a tight formation.

Section 29(c)(2)(B) provides that the term “gas produced from a tight formation” only includes gas from a tight formation—

(i) which, as of April 20, 1977, was committed or dedicated to interstate commerce (as defined in § 2(18) of the NGPA as in effect on the date of the enactment of this clause), or

(ii) which is produced from a well drilled after the date of enactment.

Prior to November 5, 1990, gas produced from a tight formation included only: (1) Gas the price of which was regulated by the United States, and (2) Gas for which the maximum lawful price applicable under the NGPA was at least 150 percent of the then applicable price under § 103 of the NGPA. The phased deregulation of natural gas under the NGPA began in 1985. The Wellhead Decontrol Act of 1989 provided for the deregulation of all previously regulated gas as of January 1, 1993. Thus, in 1990, the § 29 credit was not available to most gas produced from tight formations, and as of

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January 1, 1993, would no longer be available to any gas produced from tight formations.

Section 29(c)(2)(C) was enacted to “reinstate” the § 29 credit for gas from certain tight formations and to eliminate any requirement that the gas be regulated or eligible for price incentives. The Senate Report underlying § 29(c)(2)(C) states as follows:

Specifically, the bill treats as qualifying tight formation gas any gas produced from a tight formation (1) which is produced from a well drilled after December 31, 1990, or (2) which, as of April 20, 1977, was committed or dedicated to interstate commerce (within the meaning of section 2(18) of the Natural Gas Policy Act of 1978 as in effect on the date of enactment of this bill). Wells producing gas that was not committed or dedicated to interstate commerce as of April 20, 1977, and thus was subject to decontrol under provisions of the Natural Gas Policy Act of 1978, will not qualify for the credit under the bill. (Emphasis added.)

101 Cong. Rec. S15674 (October 18, 1990). See also H. R. Rep. No. 964, 101<sup>st</sup> Cong., 2d Sess. 134-135 (1990) (Conference Report).

Neither § 29(c)(2)(C) nor its legislative history distinguishes between tight formation gas that was subject to decontrol under the NGPA and tight formation gas that would not have been decontrolled under the NGPA. The statute simply provides that tight formation gas must be produced from wells that were committed or dedicated to interstate commerce as of April 20, 1977. Consistent with the statute, the Senate Report indicates that any gas from a tight formation that was committed or dedicated to interstate commerce as of April 20, 1977, qualifies for the credit. Accordingly, we conclude that § 29(c)(2)(C) “reinstates” the § 29 credit for any gas from a tight formation that was committed or dedicated to interstate commerce as of April 20, 1977, without regard to whether the gas was subject to decontrol under the NGPA.

CAVEAT(S)

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