Internal Revenue Service

Number: **200708005**
Release Date: 2/23/2007
Index Number: 29.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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, ID No.

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Refer Reply To:
CC:PSI:B07
PLR-125700-06
Date: November 16, 2006

LEGEND:

Taxpayer =
Q =
W =

X =
Y =
A

Prior Ruling =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
Date 9 =
Date 10 =
Date 11 =
Date 12 =
Site 1 =
Site 2 =
TAM =
Reagent A =
Reagent B =

Reagent C =

Dear :

This letter is in response to your letter on behalf of Taxpayer, dated Date 1, requesting rulings under section 29 (redesignated as section 45K) and section 702 of the Internal Revenue Code.

FACTS

The facts as represented by Taxpayer and Taxpayer's authorized representatives are as follows:

Taxpayer received Prior Ruling on Date 2, which ruled on the issues addressed by this letter. Taxpayer seeks a confirmation of the rulings in light of the relocation of the Facility and the use of Alternative Chemical Reagents.

Taxpayer is a limited liability company, taxable as a partnership. X and Y are the members in Taxpayer. W is the sole member of X. Because X is disregarded as an entity for federal income tax purposes, W is treated as owning X's member interest in Taxpayer. Y is a wholly-owned subsidiary of W.

Taxpayer acquired the Facility from Q pursuant to an Asset Purchase Agreement executed on Date 4. Q was the original owner of the Facility, which was constructed pursuant to a Construction Contract, executed on Date 5, which was assigned to Q. The Construction Contract does not provide for liquidated damages or any other limitation on the maximum amount of damages available should either party fail to perform. The Construction Contract includes a description of the facility to be constructed, a completion date and a price. Taxpayer provided an opinion of counsel that the Construction Contract constituted a binding written contract under applicable state laws prior to January 1, 1997, and at all times thereafter through completion of the contract.

The Facility is a movable facility that can be moved from one site to another depending on the availability, price and location of coal feedstock. Subsequent to the purchase, Taxpayer relocated the Facility to Site 1 that is owned by a subsidiary of W. Following the relocation, the fair market value of the original property was more than 20 percent of the Facility's total value (the cost of the new property plus the value of the original property).

Taxpayer operates and maintains the Facility. Taxpayer purchases coal feedstocks for the Facility from a variety of sources. The feedstock coal is thoroughly mixed with a chemical reagent in a pugmill. After leaving the pugmill, the mixture is carried by conveyor belt to a conveyor from which it is distributed to

by an arrangement of diverters and chutes. is equipped with short conveyor belt running under it that receives the resulting solid synthetic fuel product and carries it to a common collection belt and then out of the Facility to a storage area. In Taxpayer's production process, the combination of the chemically reactive agent, the mixing process, the retention time, and the pressure used in the process results in the formation of a solid synthetic fuel product. The synthetic fuel produced is currently sold to third party users. The Facility utilizes coal feedstock and chemical reagents that meet the requirements of Rev. Proc. 2001-34, 2001-22 I.R.B. 1293.

In the past, the Facility has used various feedstock sources, chemical reagents and chemical reagent concentrations as described in Taxpayer's letter ruling request. Taxpayer has had recognized experts in coal and chemical analysis conduct numerous tests on synthetic fuel samples produced by Taxpayer using each reagent identified in the request for rulings. These tests are described in detail in Taxpayer's letter ruling request and subsequent correspondence from Taxpayer's authorized representatives. Based on this testing of the synthetic fuel product, the experts have concluded that there was a measurable, significant change in the chemical composition of the resulting synthetic fuel compared to the unreacted coal feedstocks and chemical reagent.

In Date 6, Taxpayer relocated the Facility to Site 2. Following the relocation, the fair market value of the original property was more than 20 percent of the Facility's total value (the cost of the new property plus the value of the original property).

Subsequently, on Date 7, the Service
for purposes of § 29 (redesignated as section 45K).

The Service recently

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Taxpayer, which is currently using Reagent A, may in the future also use Alternative Chemical Reagents such as Reagent B or Reagent C, each of which satisfies the requirements of section 3.2 of Revenue Procedure 2001-34, to produce a qualified fuel.

Taxpayer's Amended and Restated Limited Liability Company Agreement allocates receipts from the sale of synthetic fuel among its members in accordance with their membership interests.

The remaining facts are the same as those stated in the Prior Ruling. The Prior Rulings that you wish to be reconfirmed in this private letter ruling are as follows:

(1) Taxpayer, with use of the Process and chemical reagents described in Taxpayer's ruling request, including the Alternative Chemical Reagents, will produce a qualified fuel" within the meaning of section 45K(c)(1)(C).

(2) Production of qualified fuel from the Facility will be attributable solely to Taxpayer within the meaning of section 45K(a)(2)(B), entitling Taxpayer to the section 45K credit for qualified fuel from the Facility that is sold to an unrelated person.

(3) The section 45K credit attributable to Taxpayer may be allocated to the members of Taxpayer in accordance with the members' interests in Taxpayer when the credit arises. For the section 45K credit, a partner's interest in Taxpayer is determined based on a valid allocation of the receipts from the sale of the section 45K qualified fuel.

(4) Relocation of the Facility to a different location after June 30, 1998, or replacement of parts of the Facility after that date, will not result in a new placed in service date for the Facility for purposes of section 45K provided that the fair market value of the original property is more than 20 percent of the Facility's total fair market value immediately following the relocation or replacement.

(5) Any termination of Taxpayer under section 708(b)(1)(B) will not preclude the reconstituted partnership from claiming the section 45K credit on the production and sale of synthetic fuel product to unrelated persons.

The only material factual changes that have occurred since the issuance of the Prior Ruling are the relocation of the Facility and the use of Alternative Chemical Reagents as described in the ruling request.

The above rulings are not affected by the relocation of the Facility and the use of Alternative Chemical Reagents as described in the ruling request.

Rev. Rul. 94-31, 1994-1 C.B. 16, concerns § 45, which provides a credit for electricity produced from certain renewable resources, including wind. The credit is based on the amount of electricity produced by the taxpayer at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service, and sold by the taxpayer to an unrelated person during the taxable year. Rev. Rul. 94-31 holds that, for purposes of § 45, a facility qualifies as originally placed in service even though it contains some used property, provided the fair market value of the used property is not more than 20 percent of the facility's total value (the cost of the new property plus the value of the used property).

Rev. Rul. 94-31 concerns a factual context similar to the present situation. Consistent with the holding in Rev. Rul. 94-31,

relocation of the Facility

after June 30, 1998 or replacement of parts of the Facility after that date, will not result in a new placed in service date for the Facility or otherwise prevent the Facility from continuing to be treated as originally placed in service prior to July 1, 1998, if the fair market value of the property used at the original facility is more than 20 percent of the Facility's total market value immediately following the relocation or replacement (the cost of the new equipment included in the Facility plus the value of the property used at the original facility).

Rev. Rul. 94-31 describes a windfarm that consists of an "array of wind turbines, towers, pads, transformers, roadways, fencing, on-site power collection systems, and monitoring and meteorological equipment." Notwithstanding that the windfarm consisted of all of these items, the ruling concludes that the "facility" for purposes of § 45 is confined to "the property on the windfarm necessary for the production of electricity from wind energy." (emphasis added.) The present situation is similar to Rev. Rul. 94-31. Thus, for purposes of determining the Facility's total fair market value at the time of relocation or replacement, a Facility consists of the process equipment directly necessary for the production of the qualified fuel, starting at the immediate input of the coal and chemical reagents to the pug mills or mixers (including any coal hoppers and reagent tanks directly feeding the pug mills or mixers) through the output from the briquetters or other forming equipment (including output hoppers, if any). Hence, the Facility's total fair market value includes the process equipment such as pugmills or mixers, the forming equipment, the equipment necessary to interconnect such equipment, the electrical, instrumentation, control systems and auxiliaries related to such equipment (including the structures that house such electrical, instrumentation and control systems), the foundation platform(s) for the above-referenced equipment, and an appropriate allocation of the engineering, project management, overhead, and other costs assignable to the relocation of such equipment and construction. The Facility's total fair market value does not include costs associated with the purchase and installation of equipment that supports the operation of the Facility but is not directly necessary for the production of the qualified fuel, such as coal beneficiation or preparation equipment (e.g., crushers, screens, dryers, or scales), other material handling or conveying equipment (e.g., stacking tubes, transfer towers, storage bunkers, mobile equipment, or conveyors), certain site improvements (e.g., fencing, lighting, earthwork, paving), separate office and bathhouse trailers for facility personnel, and buildings (if a "building" for purposes of § 168 of the Code), and other administrative assets.

Sampling and quality control are necessary for operational control of a production facility. However, a particular type of sampling equipment generally is not necessary for the production of qualified fuel. Thus, the costs of sampling equipment are excluded from the Facility's total fair market value unless the particular sampling equipment is necessary for operational control of the facility.

Consistent with the holding in Rev. Rul. 94-31,
(taking into account any relocation or replacement of parts prior to Date 12)

relocation of the Facility to a different location after Date 12, or replacement of part of the Facility after that date, will not result in a new placed in service date for the Facility for purposes of § 45K, provided the fair market value of the original property is more than 20% of the Facility's total fair

market value at the time of relocation or replacement (the cost of the new equipment included in the Facility plus the value of the used property).

CONCLUSIONS

Accordingly, based on the representations of Taxpayer and Taxpayer's authorized representatives, we reissue the Prior Rulings:

(1) Taxpayer, with use of the Process and chemical reagents described in Taxpayer's ruling request, including the Alternative Chemical Reagents, will produce a "qualified fuel" within the meaning of section 45K(c)(1)(C).

(2) Production of qualified fuel from the Facility will be attributable solely to Taxpayer within the meaning of section 45K(a)(2)(B), entitling Taxpayer to the section 45K credit for qualified fuel from the Facility that is sold to an unrelated person.

(3) The section 45K credit attributable to Taxpayer may be allocated to the members of Taxpayer in accordance with the members' interests in Taxpayer when the credit arises. For the section 45K credit, a partner's interest in Taxpayer is determined based on a valid allocation of the receipts from the sale of the section 45K qualified fuel.

(4) Relocation of the Facility to a different location after June 30, 1998, or replacement of parts of the Facility after that date, will not result in a new placed in service date for the Facility for purposes of section 45K provided that the fair market value of the original property is more than 20 percent of the Facility's total fair market value immediately following the relocation or replacement.

(5) Any termination of Taxpayer under section 708(b)(1)(B) will not preclude the reconstituted partnership from claiming the section 45K credit on the production and sale of synthetic fuel product to unrelated persons.

The conclusions drawn and rulings given in this letter are subject to the requirements that the taxpayer (i) maintain sampling and quality control procedures that conform to ASTM or other appropriate industry guidelines at the facility that is the subject of this letter, (ii) obtain regular reports from independent laboratories that have analyzed the fuel produced in such facility to verify that the coal used to produce the fuel undergoes a significant chemical change, and (iii) maintain records and data underlying the reports that the taxpayer obtains from independent laboratories including raw FTIR data and processed FTIR data sufficient to document the selection of absorption peaks and integration points.

Except as specifically ruled upon above, we express no opinion concerning the federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked by the adoption of temporary or final regulations to the extent the regulations are inconsistent with any conclusion in this ruling. See § 11.04 of Rev. Proc. 2005-1, I.R.B. 2005-1. However, when the criteria in § 11.06 of Rev. Proc. 2005-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

/s/

Joseph H. Makurath
Senior Technician Reviewer, Branch 7
(Passthroughs & Special Industries)