Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:7-PLR-111447-00
Date:
November 8, 2001

LEGEND:

P =

A =
B =
C =
D =
E =

Location 1 =

State 1 =

Date 1 =
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Dear

This letter responds to a letter dated June 6, 2000, and subsequent correspondence, submitted on behalf of P by its authorized representative, requesting rulings under section 29 of the Internal Revenue Code.

The facts as represented by P and P's authorized representative are as follows: On Date 1, P received PLR 9831010, which rules on similar issues addressed by this letter. P seeks a confirmation of the rulings in light of the purchase of the interests in P by X and Y, and a change in the chemical reagent used to produce the synthetic fuel and relocation of P's synthetic fuel facility (the "Facility") to E's site in Location 1 (the "Site") as described in the ruling request and subsequent correspondence from P's authorized representative.

P is a Delaware limited liability company, taxable as a partnership. P constructed, owns and operates the Facility for producing a solid synthetic fuel from coal using the process described in the ruling request and subsequent correspondence. The Facility is a Secondary Coal Recovery System #2000 designed by A. The Facility consists of three production lines each of which consists of a briquetter which is fed by its associated mixer and each of which is capable of being operated independently. Because each production line is capable of being operated independently and can independently produce synthetic fuel, each independent production line may be treated as a separate facility.

The Facility was constructed pursuant to a written contract entered into by A and B on Date 2. A assigned to P all of its rights and obligations under the construction contract with respect to one facility. On Date 3, B subcontracted with C to perform the procurement, assembly and installation services under the construction contract. P 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.

On Date 4, P received a Determination Letter from the District Director for the State 1 District that the Facility was placed in service prior to July 1, 1998.

On Date 5, X purchased an interest in P from D pursuant to a Purchase Agreement, as amended on Date 6. Y purchased the remaining interest in P from A on Date 7 pursuant to a Purchase Agreement.

P relocated the Facility to the Site. P has represented that following the relocation the fair market value of the original property is more than 20 percent of the Facility's total value (the cost of the new property plus the value of the original property).

P has entered into a Synthetic Fuel and Coal Sales Agreement (the "Sales Agreement") with E under which P will sell synthetic fuel to E. P also has the right to sell synthetic fuel to third parties in excess of E's projected requirements. P has represented that all sales of synthetic fuel will be to unrelated persons.

P has supplied a detailed description of the process employed at the facility. As described, the Facility and the process implemented in the Facility, including the chemical reagent used to produce the synthetic fuel, meet the requirements of Rev. Proc. 2001-34, 2001-22 I.R.B. 1293.

A recognized expert in combustion, coal, and chemical analysis has performed numerous tests on the coal used at the Facility and has submitted a report in which the expert concludes that significant chemical changes take place with the application of the process to the coal.

The rulings issued in PLR 9831010, which you wish to be reconfirmed in this private letter ruling, are as follows:

1. P, with use of the process, will produce a “qualified fuel” within the meaning of section 29(c)(1)(C).

2. The production of qualified fuel from the Facility will be attributable solely to P, entitling P to the section 29 credit for qualified fuel sold to unrelated persons.

3. The contract for the construction of the Facility constitutes a “binding written contract” within the meaning of section 29(g)(1)(A).

4. The section 29 credit attributable to P may be allocated to the members of P in accordance with the members’ interests in P when the credit arises. For the section 29 credit, a member’s interest in P is determined based on a valid allocation of the receipts from the sale of the section 29 qualified fuel.

5. A termination of P under section 708(b)(1)(B) will not preclude the reconstituted partnership from claiming the section 29 credit on the production and sale of synthetic fuel to unrelated persons.

6. Because the Facility was “placed in service” prior to July 1, 1998 within the meaning of section 29(g)(1), relocation of the Facility to a different location after June 30, 1998, will not result in a new placed in service date for the Facility for purposes section 29 provided the fair market value of the original property is more than 20 percent of the Facility’s total fair market value at the time of relocation.

The changes in facts since the issuance of PLR 9831010 are the purchase of interests in P by X and Y, and the change in chemical reagent used to produce the synthetic fuel and relocation of the Facility as described in the ruling request and subsequent correspondence from P’s authorized representative.

The above rulings are not affected by the purchase of interests in P by X and Y, or the change in chemical reagent used to produce the synthetic fuel and relocation of the Facility as described in the ruling request and subsequent correspondence from P’s authorized representative.

In addition, P has indicated that it may relocate one or two of the independent production lines to another location. Accordingly, P has also requested the following ruling:

7. Because the Facility was “placed in service” prior to July 1, 1998 within the meaning of section 29(g)(1), relocation of one or more of the independent production lines to a new location after June 30, 1998, will not result in a new placed in service date for the Facility for purposes of section 29 provided the

essential components of the independent production line are retained and the production output at the new location is not significantly increased at the new location.

RULING REQUEST #7

To qualify for the section 29 credit, P's Facility must be placed in service before July 1, 1998, pursuant to a binding written contract in effect before January 1, 1997. While section 29 does not define "placed in service," the term has been defined for purposes of the deduction for depreciation and the investment tax credit. Property is "placed in service" in the taxable year the property is placed in a condition or state of readiness and availability for a specifically assigned function. Section 1.167(a)-11(e)(1)(i) and section 1.46-3(d)(1)(ii) of the regulations. "Placed in service" has consistently been construed as having the same meaning for purposes of the deduction for depreciation and the investment tax credit. See Rev. Rul. 76-256, 1976-2 C.B. 46.

Revenue Procedure 2001-30, 2001-19 I.R.B. 1163, provides that "a facility (including one of multiple facilities located at the same site) may be relocated without affecting the availability of the credit if all essential components of the facility are retained and the production capacity of the relocated facility is not significantly increased at the new location."

P has represented that the Facility is designed with three separate and independent production lines so that each line can be operated as a separate unit to produce synthetic fuel. P has represented that all of the major components of the production line would be relocated if the production line is relocated to a new site. P has also represented that relocation of one or more production lines to another site would require the duplication of relatively minor components, and site specific items involved in the relocation of any facility, such as site preparation, paving, foundations, area lighting, and utilities.

Based on the information submitted and the representations made, we conclude that P may relocate one or more of the independent production lines provided the major or essential components of the independent production line are retained and the "production output" of the relocated production line is not significantly increased at the new location. The "production output" is the amount of qualified fuel (including the production of a briquetted fuel product) that can reasonably be expected to be actually produced by each facility using the prevailing practices in the industry regarding the performance of maintenance with regard to the various pieces of equipment in the facility, reasonable allowances for shutdowns for repairs and/or replacement of parts, etc.

CONCLUSIONS

Accordingly, based on the representations of P and P's authorized representative, we conclude as follows:

1. P, with use of the process, will produce a "qualified fuel" within the meaning of section 29(c)(1)(C).

2. The production of qualified fuel from the Facility will be attributable solely to P, entitling P to the section 29 credit for qualified fuel sold to unrelated persons.

3. The contract for the construction of the Facility constitutes a "binding written contract" within the meaning of section 29(g)(1)(A).

4. The section 29 credit attributable to P may be allocated to the members of P in accordance with the members' interests in P when the credit arises. For the section 29 credit, a member's interest in P is determined based on a valid allocation of the receipts from the sale of the section 29 qualified fuel.

5. A termination of P under section 708(b)(1)(B) will not preclude the reconstituted partnership from claiming the section 29 credit on the production and sale of synthetic fuel to unrelated persons.

6. Because the Facility was "placed in service" prior to July 1, 1998 within the meaning of section 29(g)(1), relocation of the Facility to a different location after June 30, 1998, 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 section 29 provided the fair market value of the original property is more than 20 percent of the Facility's total fair market value at the time of relocation or replacement.

7. Because the Facility was "placed in service" prior to July 1, 1998 within the meaning of section 29(g)(1), relocation of one or more of the independent production lines to a new location after June 30, 1998, will not result in a new placed in service date for the Facility for purposes of section 29 provided the essential components of the independent production line are retained and the production output at the new location is not significantly increased at the new location.

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 section 12.04 of Rev. Proc. 2001-1, 2001-1 I.R.B. 1, 46.

However, when the criteria in section 12.05 of Rev. Proc. 2001-1 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 P's authorized representative.

Sincerely,
Joseph H. Makurath
Senior Technician Reviewer, Branch 7
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

Copy for section 6110 purposes