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LEGEND

P =	Location 1 =
	Date 1 =
T =	Date 2 =
U =	Date 3 =
V =	Date 4 =
W =	Date 5 =
X =	Date 6 =
Y =	t% =
Z =	u% =
	y% =
A =	x% =
B =	z% =
C =	

Dear :

This letter is in response to your letter dated January 18, 2005, submitted on behalf of Z, requesting rulings under section 29 of the Internal Revenue Code.

FACTS

The facts as represented by P and P's authorized representative are as follows:

P received P.L.R. 200408004 on Date 1, which ruled on the issues addressed by this letter. P seeks a confirmation of those rulings in light of the sale of a membership interest in P to U and the subsequent sale of a membership interest in P to Z.

P is a Delaware limited liability company, taxable as a partnership. The members of P were X and Y. Y is a wholly owned subsidiary of T. X had complete and exclusive control of the management of P. X has extensive experience in energy, coal, and related businesses. P was formed by X to purchase from A and its affiliates a synthetic fuel facility (the Facility) that produces a solid synthetic fuel from coal (the Product).

On Date 2, P purchased the Facility from A and its affiliates pursuant to a purchase agreement. In consideration for the Facility, P made a cash payment at closing.

The Facility was constructed pursuant to a construction contract between A and B entered into on Date 3 (Construction Contract). The Construction Contract is for a synthetic fuel production facility consisting of a single production line for producing a solid synthetic fuel from coal using A's patented process. The Construction Contract provides a guaranteed maximum price and a completion date. The Construction Contract provides that any damages recoverable by B against A shall not be less than six percent of the total contract price. P provided an opinion of counsel that the Construction Contract constitutes a binding contract under state law.

Certain adjustments, repairs and improvements have been made to the Facility, material preparation, handling and sampling systems, and to the site. P has provided an expert report which states that many of these adjustments, repairs and improvements are not part of the Facility necessary to produce synthetic fuel. The expert report concludes that the remaining adjustments, repairs and improvements to the Facility necessary to produce synthetic fuel do not affect the production capacity of the Facility.

The Facility is currently located on property near Location 1 (the Site) owned by C and leased to P under a site lease agreement. P operates the Facility as a merchant plant and will purchase coal feedstock for the Facility from various coal producers or from traders or brokers of coal pursuant to various coal feedstock purchase agreements. P will sell the Product produced at the Facility to various third party customers pursuant to various synthetic fuel supply agreements.

P entered into a license agreement with A granting to P the right to use A's technology, trade secrets, and other intellectual property for producing synthetic fuel from coal. P will pay to A a royalty of a fixed dollar amount per ton of the Product produced and sold by P for use of the technology. The license agreement also provides that A will sell to P all of P's requirements of chemical reagent for the Facility. The price of the chemical reagent is A's cost to produce the chemical reagent plus a fixed amount.

On Date 4, T sold a membership interest in P to U, a wholly-owned subsidiary of X, pursuant to an Agreement for Purchase of Membership Interest. Following the closing of the sale, T owned t%, U owned u%, and Y owned y% of the membership interests in P.

On Date 5, T, Y and U (the “Sellers”) sold a membership interest in P to Z (the “Buyer”) pursuant to an Agreement for Purchase of Membership Interest. Y will continue to manage P. Following the closing of the sale, Y owns x% and Z owns z% of the membership interests in P. In exchange for the membership interests in P, Buyer paid to the Sellers an amount of cash at closing and Buyer is obligated to make certain fixed and variable payments to the Sellers. Taxpayer has provided projections based on expected operations that the net present value of the contingent payments to be made to the Sellers under the Agreement for Purchase of Membership Interest will be less than fifty percent of the total payments made to the Sellers under the Agreement for Purchase of Membership Interest.

As members of P, Y and Z (“Members”) have made (and are expected to continue to make) periodic capital contributions to P to enable it to pay its operating costs and other obligations. A proforma attached to the ruling request demonstrates that project expenses are expected to exceed revenues. In connection with the sale, P entered into an Operation and Maintenance Agreement with V (a wholly-owned subsidiary of X) for the operation and maintenance of the Facility.

The Service recently completed an audit of P. In connection with the audit, the Service requested and reviewed information and various documents, including documentation of replacement of parts, regarding the placed-in-service facts of the Facility. On Date 6, P received signed Forms 870-PT from the Service which closed the audit and concluded with an affirmative statement that P’s Facility was placed-in-service prior to July 1, 1998, pursuant to a binding written contract in effect before January 1, 1997.

P has supplied a detailed description of the process employed at the Facility. P also has proposed that, from time to time, one of two chemical reagents may be used in the process for the production of Product. As described, the Facility and the process implemented in the Facility, including the chemical reagents, 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 the Product produced at the Facility and has submitted reports in which the expert concludes that significant chemical changes take place with the application of the process to the coal, including the alternative chemical reagents. P, with use of the process, expects to maintain a level of chemical change in the production of synthetic fuel that is determined through similar analysis by experts to be a significant chemical change.

The rulings issued in P.L.R. 200408004, which you wish to be reconfirmed in this private letter ruling are as follows:

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

2. The construction contract constitutes a "binding written contract in effect before January 1, 1997" within the meaning of section 29(g)(1)(A).

3. The Facility is “placed in service” for purposes of section 29(g)(1) on the date that the Facility was first placed in a condition or state of readiness and availability to produce qualified fuel.

4. Production from the Facility will be attributable solely to P within the meaning of section 29(a)(2)(B), and P will be entitled to the section 29 credit for qualified fuel from the Facility that is sold to an unrelated person.

5. 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 allocation of 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.

6. 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.

7. Provided 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 of 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.

The changes in facts since the issuance of the prior rulings are the sale of a membership interest in P to U, and the subsequent sale of a membership interest in P to Z as described in the ruling request.

The above rulings are not affected by the sale of a membership interest in P to U, and the subsequent sale of a membership interest in P to Z as described in the ruling request.

RULING REQUESTS 1 & 4

Section 29(a) allows a credit for qualified fuels sold by the taxpayer to an unrelated person during the taxable year, the production of which is attributable to the taxpayer. The credit for the taxable year is an amount equal to $3.00 (adjusted for inflation) multiplied by the barrel-of-oil equivalent of qualified fuels sold.

Section 29(c)(1)(C) defines "qualified fuels" to include liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks.

In Rev. Rul. 86-100, 1986-2 C.B. 3, the Internal Revenue Service ruled that the definition of the term "synthetic fuel" under § 48(l) and its regulations are relevant to the interpretation of the term under § 29(c)(1)(C). Former § 48(l)(3)(A)(iii) provided a credit for the cost of equipment used for converting an alternate substance into a synthetic liquid, gaseous, or solid fuel. Rev. Rul. 86-100 notes that both § 29 and former § 48(l) contain almost identical language and have the same overall congressional intent, namely to encourage energy conservation and aid development of domestic energy production. Under § 1.48-9(c)(5)(ii) of the Income Tax Regulations, a synthetic fuel "differs significantly in chemical composition," as opposed to physical composition, from the alternate substance used to produce it. Coal is an alternate substance under § 1.48-9(c)(2)(i).

Consistent with its private letter ruling practice that began in the mid 1990's, the Service, in Rev. Proc. 2001-30, provided that taxpayers must satisfy certain conditions in order to obtain a letter ruling that a solid fuel (other than coke) produced from coal is a qualified fuel under § 29(c)(1)(C). Rev. Proc. 2001-30, as modified by Rev. Proc. 2001-34, 2001-1 C.B. 1293. The revenue procedure requires taxpayers to present evidence that all, or substantially all, of the coal used as feedstock undergoes a significant chemical change. To meet this requirement and obtain favorable private letter rulings, taxpayers provided expert reports asserting that their processes resulted in a significant chemical change.

In Announcement 2003-46, 2003-30 I.R.B. 222, the Service announced that it was reviewing the scientific validity of test procedures and results presented of significant chemical change in expert reports. In Announcement 2003-70, 2003-46 I.R.B. 1090, the Service announced that it had determined that the test procedures and results used by taxpayers were scientifically valid if the procedures were applied in a consistent and unbiased manner. However, the Service concluded that the processes approved under its long standing ruling practice and as set forth in Rev. Proc. 2001-30 did not produce the level of chemical change required by § 29(c)(1)(C). Nevertheless, the Service announced that it recognized that many taxpayers and their investors have relied on its long standing ruling practice to make investments. Therefore, the Service announced that it would continue to issue rulings on significant chemical change, but only under the guidelines set forth in Rev. Proc. 2001-30, as modified by Rev. Proc. 2001-34.

This ruling is provided to P consistent with Announcement 2003-70 and the Service's long standing ruling practice. Accordingly, based on the expert test results submitted by P and its Members, we conclude that the synthetic fuel produced at the Facility using the described process and specified chemical reagents is a solid synthetic fuel produced from coal constituting a "qualified fuel" within the meaning of § 29(c)(1)(C). Because P owns the Facility and operates and maintains the Facility through its agent, we conclude that P will be entitled to the § 29 credit for the production of the qualified fuel from the Facility that is sold to an unrelated person.

RULING REQUEST 2

Sections 29(f)(1)(B) and (f)(2) provide that § 29 applies with respect to qualified fuels which are produced in a facility placed-in-service after December 31, 1979, and before January 1, 1993, and which are sold before January 1, 2003.

Section 29(g)(1) modifies § 29(f) in the case of a facility producing qualified fuels described in § 29(c)(1)(C), which qualified fuels include solid synthetic fuels produced from coal or lignite. Section 29(g)(1)(A) provides that for purposes of § 29(f)(1)(B), a facility shall be treated as placed-in-service before January 1, 1993, if the facility is placed-in-service before July 1, 1998, pursuant to a binding written contract in effect before January 1, 1997. Section 29(g)(1)(B) provides that if the facility is originally placed-in-service after December 31, 1992, § 29(f)(2) shall be applied by substituting "January 1, 2008" for "January 1, 2003."

A contract is binding only if it is enforceable under local law against a taxpayer, and does not limit damages to a specified amount, e.g., by use of a liquidated damages provision. A contract provision limiting damages to an amount equal to at least five percent of the total contract price, for example, should be treated as not limiting damages. The Construction Contract, executed prior to January 1, 1997, includes such essential features as a description of the facility to be constructed, a completion date, and a maximum price. The contract also provides that damages shall not be less than six percent of the total contract price. P provided an opinion of counsel that the contract is binding under applicable law. Therefore, we conclude that the Construction Contract is a "binding written contract" in effect before January 1, 1997, within the meaning of § 29(g)(1)(A).

RULING REQUEST 5

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

Section 7701(a)(14) provides that "taxpayer" means any person subject to any internal revenue tax. Generally, under § 7701(a)(1), the term "person" includes an individual, a trust, estate, partnership, association, company, or corporation.

Section 702(a)(7) provides that each partner determines the partner's income tax by taking into account separately the partner's distributive share of the partnership's other items of income, gain, loss, deduction, or credit to the extent provided by regulations prescribed by the Secretary. Section 1.702-1(a) provides that the distributive share is determined as provided in § 704 and § 1.704-1.

Section 704(a) provides that a partner's distributive share of income, gain, loss, deduction, or credit is, except as otherwise provided in chapter 1 of subtitle A of title 26, determined by the partnership agreement. Section 704(b) provides that a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) is determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances) if (1) the partnership agreement does not provide as to the partner's distributive share of income, gain, loss, deduction, or credit (or item thereof), or (2) the allocation to a partner under the agreement of income, gain, loss, deduction, or credit (or item thereof) does not have substantial economic effect.

Section 1.704-1(b)(4)(ii) provides that allocations of tax credits and tax credit recapture (except for § 38 property) are not reflected by adjustments to the partners' capital accounts. Thus, these allocations cannot have economic effect under § 1.704- 1(b)(2)(ii)(b)(1), and the tax credits and tax credit recapture must be allocated in accordance with the partners' interests in the partnership as of the time the tax credit or credit recapture arises. If a partnership expenditure (whether or not deductible) that gives rise to a tax credit in a partnership tax year also gives rise to valid allocations of partnership loss or deduction (or other downward capital account adjustments) for the year, then the partners' interests in the partnership with respect to such credit (or the cost giving rise to it) are in the same proportion as the partners' respective distributive shares of the loss or deduction (and adjustments). See § 1.704-1(b)(5), example (11). Identical principles apply in determining the partners' interests in the partnership with respect to tax credits that arise from receipts of the partnership (whether or not taxable).

Based on the information submitted and the representations made, we conclude that the credit will be allowed to P and the credit may be passed through to and allocated among the Members of P under the principles of § 702(a)(7) in accordance with each Member’s interest in P as of the time the credit arises. For purposes of the § 29 credit, a Member's interest in P is determined based on a valid allocation of the receipts from the sale of the § 29 qualified fuel.

RULING REQUEST 6

The § 29 credit has always been a time sensitive credit in that eligibility for the credit is determined when facilities or wells producing qualified fuels are placed in service and when the qualifying fuels are produced and sold to unrelated persons. For example, the § 44D credit, as originally enacted in the Crude Oil Windfall Profit Tax Act of 1980, was generally available for post-1979 production sold before January 1, 2001, from facilities placed in service after December 31, 1979 and before January 1, 1990.

Congress has extended the § 29 credit four times. The placed-in-service deadline and the period for claiming the § 29 credit were extended in the Technical and Miscellaneous Revenue Act of 1988 (1991 for placed in service), Omnibus Budget Reconciliation Act of 1990 (1993 for placed in service and 2003 for the end of the credit period), Energy Policy Act of 1992 (1997 for placed in service and 2007 for the end of the credit period), and Small Business Job Protection Act of 1996 (June 30, 1998, for placed in service).

It is clear from the legislative history of § 44D that Congress intended the credit to apply to facilities placed in service after 1979, and that the placed-in-service deadline in § 29(f)(1)(B) must be read as applying to when the facility is first placed in service within the applicable dates. The placed-in-service deadlines contained in §§ 29(f) and 29(g) focus on the facility, and not the owner of the facility. The legislative history of § 44D clearly shows that Congress wanted to encourage the production of new alternative fuels from facilities first placed in service after 1979, and not provide a tax incentive for production capacity in service before 1980.

Section 29(g)(2) demonstrates that Congress knows how to preclude transferees of facilities from claiming the § 29 credit. That provision provides that the extension of the period for placing facilities in service after 1992 does not apply to any facility that produces coke or coke gas unless the original use of the facility commences with the taxpayer.

Accordingly, the determination of whether a facility has satisfied the placed-in-service deadline under either § 29(f)(1)(B) or 29(g)(1)(A) is made by reference to when the facility is first placed in service, not when the facility is transferred or sold to a different taxpayer.

Section 708(b)(1)(B) provides that a partnership shall be considered as terminated if within a twelve-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits.

Section 1.708-1(b)(4) provides that if a partnership is terminated by a sale or exchange of an interest, the following is deemed to occur: the partnership contributes all of its assets and liabilities to a new partnership in exchange for an interest in the new partnership; and, immediately thereafter, the terminated partnership distributes interests in the new partnership to the purchasing partner and the other remaining partners in proportion to their respective interests in the terminated partnership in liquidation of the terminated partnership, either for the continuation of the business by the new partnership or for its dissolution and winding up. Section 1.708-1(b)(4) applies to terminations of partnerships under § 708(b)(1)(B) occurring on or after May 9, 1997. As discussed above, the placed-in-service deadline in § 29(f)(1)(B) and 29(g)(1)(A) must be read as applying to when the facility is first placed-in-service within the applicable dates. The placed-in-service deadlines contained in §§ 29(f)(1)(B) and 29(g)(1)(A) focus on the facility, and not the taxpayer owning the facility. Accordingly, the placed-in-service deadline under § 29(f)(1)(B) and 29(g)(1)(A) is determined by reference to when the facility is first placed-in-service. Therefore, because the Facility was "placed-in-service" prior to July 1, 1998 within the meaning of § 29(g)(1), the sale of the Facility after June 30, 1998 will not result in a new placed-in-service date for the Facility for purposes of § 29 for the new owner. Further, a termination of P under § 708(b)(1)(B) will not preclude the reconstituted partnership from claiming the § 29 credit on the production and sale of synthetic fuel to unrelated persons.

RULING REQUESTS 3 & 7

To qualify for the § 29 credit, the facility must be placed-in-service before July 1, 1998, pursuant to a binding written contract in effect before January 1, 1997. Although § 29 does not define "placed in service," the term has been defined for purposes of the deduction for depreciation and the investment tax credit. For these purposes, property is deemed to have been "placed in service" in the taxable year that the property is placed in a condition or state of readiness and availability for a specifically assigned function. Sections 1.167(a)-11(e)(1)(i) and 1.46-3(d)(1)(ii) of the Income Tax Regulations.

Accordingly, P's Facility will be deemed to have been "placed-in-service" for purposes of § 29(g)(1) on the date that the Facility was first placed in a condition or state of readiness and availability to produce a qualified fuel. As discussed above, the issue regarding when the Facility was placed-in-service was subject to examination. The Service determined, without mutual concessions, that P's facility was placed-in-service prior to July 1, 1998, pursuant to a binding written contract in effect before January 1, 1997. It is the policy of the Service that such determinations are not reconsidered absent extraordinary circumstances (for example fraud or misrepresentation). *See* § 6624(c).

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, because the Facility was placed-in-service prior to July 1, 1998, within the meaning of § 29(g)(1), 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 <u>necessary for the production</u> 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 briquetters or other 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, because P’s Facility was "placed-in-service" prior to July 1, 1998, within the meaning of § 29(g)(1), relocation of the Facility to a different location, or replacement of part of the Facility after June 30, 1998, will not result in a new placed-in-service date for the Facility for purposes of § 29, 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 P and P's authorized representative, we conclude as follows:

1. P, with use of the enumerated process and the specified chemical reagents, will produce a "qualified fuel" within the meaning of section 29(c)(1)(C) of the Code.

2. The Construction Contract (as defined herein) constitutes a "binding written contract in effect before January 1, 1997" within the meaning of section 29(g)(1)(A) of the Code.

3. The Facility is “placed in service” for purposes of section 29(g)(1) on the date that the Facility was first placed in a condition or state of readiness and availability to produce qualified fuel.

4. The production of qualified fuel from the Facility will be attributable solely to P within the meaning of section 29(a)(2)(B) of the Code, and P will be entitled to the section 29 credit for qualified fuel from the Facility that is sold to unrelated persons.

5. 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 allocation of 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.

6. 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.

7. Because the Service has determined (taking into account any relocation or replacement of parts prior to Date 6) that P’s 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 Date 6, 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 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.

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 representative.

Sincerely,

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