Internal Revenue Service

Department of the Treasury

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Date:
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Company =

X =

Dear

This letter responds to a letter, dated July 9, 1999, and subsequent correspondence, requesting a ruling under section 29 of the Internal Revenue Code.

Company represents that the facts are as follows:

Company leases the right to collect landfill gas from the owner of the landfill. Company owns and operates a facility that collects and processes the landfill gas. The landfill gas is a qualified fuel under section 29(c)(1)(B)(ii). Company sells the landfill gas to unrelated persons.

The facility was originally placed in service after December 31, 1979, and before January 1, 1993. The facility consists of pipes, wells, headers, a condensate knock-out vessel, blowers, and a meter.

An addition to the facility was placed in service after December 31, 1992, and before July 1, 1998, pursuant to a binding written contract in effect before January 1, 1997. The addition to the facility consists of pipes, wells, headers, and condensate knock-out vessels. The addition is connected to the original pipes, blowers, and meter. The addition by itself is incapable of producing, filtering, compressing, and measuring the gas. The addition constitutes only X percent of the total facility cost.

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

Sections 29(f)(1)(B) and (f)(2) of the Code provide that section 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) of the Code modifies section 29(f) in the case of a facility producing qualified fuels described in section 29(c)(1)(B)(ii), which qualified fuels include gas produced from biomass. Section 29(g)(1)(A) provides that for purposes of section 29(f)(1)(B), such a facility is to 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, section 29(f)(2) is to be applied by substituting for the date therein January 1, 2008.

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 Income Tax 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.

Accordingly, based on the facts as represented by Company, we conclude that sales to unrelated persons of qualified fuel produced because of an addition to Company's landfill gas facility, which was placed in service after December 31, 1979, and before January 1, 1993, are entitled to the section 29 credit through December 31, 2002, provided that the addition was built pursuant to a binding written contract in effect before January 1, 1997, and was placed in service before July 1, 1998.

However, no credit will be allowed for sales of fuel produced because of any later addition to Company's facility not built pursuant to a binding written contract in effect before January 1, 1997, and placed in service before July 1, 1998.

Except as specifically ruled upon above, we express no opinion concerning the federal income tax consequences of the transaction described above. Specifically, we express no opinion on when Company's facility and the addition to the facility were placed in service for purposes of section 29 or whether Company's facility and the addition to the facility are producing a qualified fuel.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code 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 been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations to the extent the regulations are inconsistent with any conclusions in the ruling. See section 12.04 of Rev. Proc. 2000-1, 2000-1 I.R.B. 4, 46.

However, when the criteria in section 12.05 of Rev. Proc. 2000-1 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, the original of this letter is being sent to you and copies are being sent to your authorized representatives.

Sincerely yours,
CHARLES B. RAMSEY
Branch Chief, Branch 6
Office of Assistant Chief Counsel
(Passthroughs and Special Industries)