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-119616-00
Date:
February 27, 2002

In Re:

LEGEND:

P	=
X	=
Y	=
A	=
B	=
C	=
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G	=
Location 1	=
State 1	=
Date 1	=
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Date 7	=

Dear :

This letter responds to a letter dated October 5, 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 9839022, 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, a change in the chemical reagents used to produce synthetic fuel and relocation of P's synthetic fuel facility (the Facility) to F's, an affiliate of E, site near 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 (the Product) using the process described below. 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 Sales Agency Agreement for Synthetic Fuel with E for the sale of the Product to unrelated purchasers. In the future, E may assign its rights and obligations under the Sales Agency Agreement to its affiliate, G. 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. P also has proposed that, from time to time, one of three alternative 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 coal combustion chemistry 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 expert analysis to be a significant

chemical change.

The rulings issued in PLR 9839022, 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 9839022 are the purchase of interests in P by X and Y, the change in chemical reagents used to produce the synthetic fuel, and relocation of the Facility as described in the ruling request and subsequent correspondence by P’s authorized representative.

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

Accordingly, we re-issue the rulings given in PLR 9839022. Thus in summary:

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.

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. 2002-1, 2002-1 I.R.B. 1, 50. However, when the criteria in section 12.05 of Rev. Proc. 2002-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

Sincerely yours,

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

Enclosure:
Copy for section 6110 purposes