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Dear :

This letter responds to a letter, dated March 31, 2004, submitted on behalf of A by its authorized representative, requesting rulings under § 29 and §702 of the Internal Revenue Code.

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

A is a Delaware limited liability company that is classified as a disregarded entity for federal tax purposes. A owns a facility that processes coal feedstock into solid synthetic fuel (Facility). B is a Delaware limited liability company and owns all of the membership interest in A. B is classified as a disregarded entity for federal income tax purposes. C is a Delaware limited partnership and owns all of the membership interest in B. Because B is treated as a disregarded entity for federal tax purposes, C is treated as owning B's membership interest in A. Because A is treated as a disregarded entity for federal tax purposes, C is treated as owning all of the assets of A.

D, a Delaware limited liability company, owns a 99.9% limited partnership interest in C. E, a Massachusetts corporation, owns a 0.1% general partnership interest in C. K owns a 0.01% membership interest in D, and H, a general partnership, owns a 50.0% limited partnership interest in D. J, a limited liability company, owns a 49.99% limited partnership interest in D. J is disregarded for federal income tax purposes, and its sole member (through another disregarded entity) is I.

On Date 1, A received PLR-147521-02 (Initial Ruling) stating, among other things, that the "synthetic fuel produced by the Facility is a solid synthetic fuel produced from coal feedstock that differs significantly in chemical composition from the coal from which it is produced and thus constitutes a 'qualified fuel' within the meaning of § 29(c)(1)(C)." On Date 2, A received PLR-132596-03 (Second Ruling), which confirmed the Initial Ruling in response to A's request for rulings in light of A's potential use of

alternative chemical reagents. A seeks confirmation of the Initial Ruling and Second Ruling in light of the J's purchase of an indirect ownership interest in C.

Pursuant to the Membership Interest Purchase Agreement, dated Date 3, J purchased a 49.99% interest in D from H. The total consideration payable by J consists of (i) an initial payment of $K, (ii) a non-contingent payment note in the face amount of $L, and (iii) a contingent payment note calling for payments over time based on § 29 credit resulting from the production and sale of synthetic fuel from the Facility.

A represents that based on the expected operations of the Facility, the net present value of the initial payment of $K and the non-contingent payment will exceed 50% of the net present value of the total consideration to be received by H with respect to the Facility under the Purchase Agreement.

The Facility was built pursuant to a Construction Contract entered into on Date 4 between X (as buyer) and Y and/or Z (as seller). On Date 5, the Construction Contract was assigned from X to V. On Date 6, the Construction Contract was assigned from V to U. On Date 7, the Construction Contract was assigned from U to W. On Date 8, B acquired the Facility from W. Thereafter, B contributed the Facility to A.

The Construction Contract provides for liquidated damages of at least five percent of the cost of the Facility. It also includes a description of the Facility to be constructed, a completion date, and a price. The Construction Contract is valid under state law. On Date 9, U received PLR-9818012, which stated that the Construction Contract constitutes a "'binding written contract" within the meaning of § 29(g)(1)(A).

The Facility was constructed at Site X. A represents that the Facility was in a condition or state of readiness and availability for its specifically assigned function and was operational before July 1, 1998.

The Facility was designed with the ability to be moved from one site to another depending on the availability, price, quality, and location of coal feedstock. On Date 10, A relocated the Facility from Site X to a new location at Site Y. This relocation occurred because of A's inability to obtain sufficient coal feedstock at Site X and a lack of demand for synthetic fuel in the region of Site X. Following this relocation, the fair market value of the original property comprising the Facility at Site X was more than 20 percent of the Facility's total value (the cost of the new property plus the value of the original property). Further, all essential components of the Facility are retained at Site Y and the production capacity of the Facility has not significantly increased at Site Y.

Effective Date 11, A entered into a Facility Operating Agreement with F (an unrelated party) for the operation and maintenance of the Facility. Under this agreement, F provides services to A in connection with the relocation, operation and

accounting for the Facility. F is reimbursed for specified costs in connection with the start-up of the Facility, and up to $M of its costs in relocating the Facility, in each case with interest, but is required to bear a portion of the costs of upgrading Site Y to accommodate the Facility. For its other services, F is paid a fee of $N for each ton of synthetic fuel sold, subject to certain inflation adjustments. F is required to fund certain operational expenses of the Facility, and is reimbursed for such expenses with interest, except that F is responsible for expenses that exceed budgeted costs in certain circumstances. F will procure (at the expense of A) the chemical change agent for use at the Facility, and make certain representations regarding the chemical change resulting from the use of the chemical change agent.

Pursuant to an Exclusive Coal Feedstock Supply Agreement entered into as of Date 11 between A and F, A is required to purchase the coal feedstock for the Facility from F. During the initial 18 months of operation of the Facility, F agrees that the price of certain minimum quantities of the coal feedstock will not exceed by more than $O the sales price of the synthetic fuel produced by the Facility. Following the initial 18 months of operation, F will sell coal feedstock to A at a price that is determined by reference to the market price plus a supply fee of $P per ton of coal feedstock supplied, which, upon renewal of the agreement, is subject to adjustment for inflation. F is entitled to a bonus procurement fee as an incentive to purchase coal feedstock at the least possible cost. Under the agreement, F agrees to procure coal feedstock that will result in the production of qualified fuel and that meets minimum quality standards and to test the coal feedstock to determine whether these standards are satisfied.

A also entered into an Exclusive Agreement for Marketing of Synfuel Product with F. Under this agreement, A appoints F as the exclusive agent for the marketing of synthetic fuel produced by the Facility. The agreement authorizes F to enter into contracts on behalf of A to sell synthetic fuel produced by the Facility. Under this agreement, F agrees to remit to A all amounts received from the sale of the synthetic fuel less (a) a barge transloading fee of $Q per ton, (b) a brokerage fee of $P per ton, and (c) transportation fees paid to third parties. Upon renewal of this agreement, the marketing fee is subject to adjustment for inflation. All sales of synthetic fuel produced by the Facility will be to unrelated persons.

Pursuant to the Amended and Restated Contract Management Agreement, dated as of Date 12, between A and G (an unrelated party), G will manage the operation of the Facility on behalf of A. Under this agreement, G will monitor the performance of F, propose and monitor F's compliance with the annual budget, perform certain of A's obligations, and otherwise enforce the rights of A under certain contracts, including A's right to terminate those contracts in the event of specified cost overruns by F under the Operating Agreement. G may propose changes to the type and percentage of binder used by the Facility, and is responsible for determining that the operation of the Facility will comply with specified guidelines. In consideration for the performance of its

services, G will receive a management fee equal to $Q per ton of Qualified Fuel (as specially defined under the management agreement) produced by the Facility.

The Facility consists of an integrated facility for the production of a solid synthetic fuel from coal. The process which occurs in the Facility consists of the following steps: (i) thoroughly mixing coal feedstocks with a chemical change agent in a mixer/blender auger, (ii) feeding metered amounts of the coal feedstock and chemical change agent mixture into a roll briquetter, and (iii) compressing the mixture into synthetic fuel. The Facility utilizes coal feedstock and chemical reagents that meet the requirements of Rev. Proc. 2001-34, 2001-1 C.B. 1293.

A has engaged recognized experts in coal combustion chemistry to conduct tests on synthetic fuel samples produced by the Facility using each reagent identified in the request for rulings. Based on this testing of the reagents, 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.

C allocates receipts from the sale of synthetic fuel among its partners in accordance with the partnership interests of D and E as set forth in C's partnership agreement.

Other than the purchase of membership interest in D by J, A has not made and does not contemplate making any material changes to the facts, representations, or documents as represented in the request submitted for the Initial Ruling and the Second Ruling.

The rulings issued in the Initial Ruling and the Second Ruling which you wish to be reconfirmed in this private letter ruling are as follows:

1. The synthetic fuel produced by the Facility using any of the described reagents is a solid synthetic fuel produced from coal feedstock that differs significantly in chemical composition from the coal from which it is produced and thus constitutes a "qualified fuel" within the meaning of § 29(c)(1)(C).

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

3. The Facility is "placed in service" for purposes of §29(g) on the date that it was placed in a condition or state of readiness and availability for its specifically assigned function (as described in Treas. Reg. §§ 1.46-3(d)(1)(ii) and 1.167(a)-11(e)(1)(i)) to produce synthetic fuel.

4. Production from the Facility will be attributable solely to C, through its indirect ownership of A, within the meaning of § 29(a)(2)(B), and C, through its indirect ownership of A, will be allowed the credit as determined under §29 for synthetic fuel produced by the Facility and sold by A to unrelated persons.

5. Provided the Facility was "placed in service" within the meaning of §29(g)(1) prior to July 1, 1998, relocation of the Facility after June 30, 1998 or replacement of parts after that date will not result in a new placed in service date for the Facility for purposes of §29 if the fair market value of the original property that is incorporated into the relocated Facility exceeds 20% of the total fair market value of the Facility immediately following the relocation or replacement. The relocation of the Facility and the replacement of parts as described in the ruling request will not result in a new placed in service date for the Facility or otherwise prevent the Facility from continuing to be treated as placed in service.

6. Any § 29 credit allowed to C, through its indirect ownership of A, may be passed through to and allocated among the partners of C, through its indirect ownership of A, under the principles of §702(a)(7) in accordance with the partners' interest in C, through its indirect ownership of A, at the time the § 29 credits are allowed. For purposes of the § 29 credit, a partner's interest in C is determined based on a valid allocation of the receipts from the sale of the § 29 credit synthetic fuel. Similarly, any § 29 credits allowed to D may be passed through to and allocated among the partners of D under the principles of §702(a)(7) in accordance with the partners' interests in D at the time the § 29 credits are allowed. For purposes of the § 29 credit, a partner's interest in D is determined based on a valid allocation of the receipts from the underlying sale of the synthetic fuel.

7. Provided the Facility was "placed in service" within the meaning of § 29(g)(1) prior to July 1, 1998, the Facility will continue to be treated as placed in service before July 1, 1998 if sold to a new owner after such date or if C, through its indirect ownership of A, terminates within the meaning of §708(b).

8. B's purchase of the Facility and subsequent contribution to A will not affect the date that the Facility was placed in service for purposes of § 29. Further, the purchase of an indirect ownership interest in the Facility by J will not affect the date that the Facility was placed in service for purposes of §29. Therefore, C, through its indirect ownership of A, will be allowed the § 29 credit for synthetic fuel produced by the Facility and sold to unrelated persons before January 1, 2008.

RULING REQUEST #1

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 A consistent with Announcement 2003-70 and the Service's long standing ruling practice. Accordingly, based on the expert test results submitted by A, we conclude that A, with use of the described process and specified chemical reagents, will produce a solid synthetic fuel from coal constituting a "qualified fuel" within the meaning of § 29(c)(1)(C). Because A owns the Facility and operates and maintains the Facility through its agent, we conclude that A 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, provides for liquidated damages of at least five percent of the total contract price and includes such essential features as a description of the facility to be constructed, a completion date, and a price. 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 REQUESTS #3 and #5

To qualify for the § 29 credit, A's Facility must be placed in service before July 1, 1998, pursuant to a binding written contract in effect before January 1, 1997. While § 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. Treas. Reg. §§ 1.167(a)-11(e)(1)(i) and 1.46-3(d)(1)(ii). "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.

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 included in the facility plus the value of the used property).

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, the 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).

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 A'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 percent 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).

RULING REQUEST #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.

Under § 7701(a)(14), "taxpayer" means any person subject to any internal revenue tax. Furthermore, § 7701(a)(1) provides that when used in title 26, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, "person" will be construed to mean and include an individual, trust, estate, partnership, association, company, or corporation. For federal income tax purposes, under § 301.7701-2 of the Income Tax Regulations, a business entity that has a single owner and is not a corporation is disregarded as an entity separate from its owner.

A owns the Facility, and through agents, A operates and maintains the Facility and sells the resulting qualified fuel. However, A is a single member limited liability company owned by B, a single member limited liability company owned by C, a limited partnership. For federal income tax purposes, A and B are disregarded entities treated in the same manner as a branch or division of C. Accordingly, for purposes of § 29(a)(2)(B), C is the taxpayer because it is a limited partnership, a taxpayer under § 7701(a)(14), that is deemed to own the Facility, to operate and maintain the Facility, and to sell the resulting qualified fuel. Therefore, all production of qualified fuel from the Facility will be attributable solely to C within the meaning of § 29(a)(2)(B) and C will be entitled to the § 29 credit for the production of qualified fuel from the Facility that is sold to unrelated persons.

RULING REQUEST #6

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, assuming the solid synthetic fuel produced and sold qualifies for the § 29 credit, the credit will be allowed to C and the credit may be passed through to and allocated among the partners of C under the principles of § 702(a)(7) in accordance with each partner’s interest in C as of the time the credit arises. For purposes of the § 29 credit, a partner's interest in C is determined based on a valid allocation of the receipts from the sale of the § 29 credit qualified fuel. Similarly, any § 29 credits allowed to D may be

passed through to and allocated among the partners of D under the principles of §702(a)(7) in accordance with the partners' interests in D at the time the § 29 credits are allowed. For purposes of the § 29 credit, a partner's interest in D is determined based on a valid allocation of the receipts from the underlying sale of the synthetic fuel.

RULING REQUEST #7

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 the production and sale of alternative fuels after December 31, 1979, and before January 1, 1990, on property that first began production after January 1, 1980.

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).

If § 29(f)(1)(B) were read as requiring facilities producing qualified fuels to be placed in service by the taxpayer, facilities placed in service before 1980 that are sold or transferred to a new taxpayer after 1979 would entitle the purchaser/transferee to claim the § 29 credit. 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 made by reference to when the facility is first placed in service. Therefore, provided 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 C under § 708(b)(1)(B) will not preclude the reconstituted partnership from claiming the § 29 credit for the production and sale of synthetic fuel to unrelated persons.

RULING REQUEST #8

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 determination of whether a facility has satisfied the placed in service deadline under §§ 29(f)(1)(B) and 29(g)(1)(A) is made by reference to when the facility is first placed in service, not when the facility is placed in service by a transferee taxpayer. Therefore, we conclude that B's purchase of the Facility and subsequent contribution to A will not affect the date that the Facility was placed in service for purposes of § 29. Provided the Facility was "placed in service" prior to July 1, 1998

within the meaning of § 29(g)(1), C will be allowed the § 29 credit for synthetic fuel produced by the Facility and sold to unrelated persons prior to January 1, 2008.

CONCLUSION

Based solely on the information and representations submitted, we conclude as follows:

1. The synthetic fuel produced by the Facility using any of the described reagents is a solid synthetic fuel produced from coal feedstock that differs significantly in chemical composition from the coal from which it is produced and thus constitutes a "qualified fuel" within the meaning of § 29(c)(1)(C).

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

3. The Facility is "placed in service" for purposes of §29(g) on the date that it was placed in a condition or state of readiness and availability for its specifically assigned function (as described in Treas. Reg. §§ 1.46-3(d)(1)(ii) and 1.167(a)-11(e)(1)(i)) to produce synthetic fuel.

4. Production from the Facility will be attributable solely to C, through its indirect ownership of A, within the meaning of § 29(a)(2)(B), and C, through its indirect ownership of A, will be allowed the credit as determined under §29 for synthetic fuel produced by the Facility and sold by A to unrelated persons.

5. Provided the Facility was "placed in service" within the meaning of §29(g)(1) prior to July 1, 1998, relocation of the Facility after June 30, 1998 or replacement of parts after that date will not result in a new placed in service date for the Facility for purposes of §29 if the fair market value of the original property that is incorporated into the relocated Facility exceeds 20% of the total fair market value of the Facility immediately following the relocation or replacement. The relocation of the Facility and the replacement of parts as described in the ruling request will not result in a new placed in service date for the Facility or otherwise prevent the Facility from continuing to be treated as placed in service.

6. Any § 29 credit allowed to C, through its indirect ownership of A, may be passed through to and allocated among the partners of C, through its indirect ownership of A, under the principles of §702(a)(7) in accordance with the partners' interest in C, through its indirect ownership of A, at the time the § 29 credits are allowed. For purposes of the § 29 credit, a partner's interest in C is determined based on a valid

allocation of the receipts from the sale of the § 29 credit synthetic fuel. Similarly, any § 29 credits allowed to D may be passed through to and allocated among the partners of D under the principles of §702(a)(7) in accordance with the partners' interests in D at the time the § 29 credits are allowed. For purposes of the § 29 credit, a partner's interest in D is determined based on a valid allocation of the receipts from the underlying sale of the synthetic fuel.

7. Provided the Facility was "placed in service" within the meaning of § 29(g)(1) prior to July 1, 1998, the Facility will continue to be treated as placed in service before July 1, 1998 if sold to a new owner after such date or if the C, through its indirect ownership of A, terminates within the meaning of §708(b).

8. B's purchase of the Facility and subsequent contribution to A will not affect the date that the Facility was placed in service for purposes of § 29. Further, the purchase of an indirect ownership interest in the Facility by J will not affect the date that the Facility was placed in service for purposes of §29. Therefore, C, through its indirect ownership of A, will be allowed the § 29 credit for synthetic fuel produced by the Facility and sold to unrelated persons before January 1, 2008.

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 taxpayers obtain from independent laboratories including raw FTIR data and processed FTIR data sufficient to document the selection of absorption peaks and integration points.

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. 2004-1, I.R.B. 2004-1. However, when the criteria in § 11.05 of Rev. Proc. 2004-1 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 A's authorized representative.

Sincerely yours,

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

Enclosure:
Copy for § 6110 purposes

cc