Internal Revenue Service

Number: **200517018**
Release Date: 4/29/2005
Index Number: 29.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B07
PLR-147040-04
Date: December 21, 2004

LEGEND:

P =	Date 1 =	Amount 1 =
	Date 2 =	Amount 2 =
W =	Date 3 =	w% =
	Date 4 =	x% =
	Date 5 =	y% =
X =	Date 6	z% =
	Date 7 =	a% =
	Date 8 =	b% =
Y =	Date 9 =	c% =
Z =	Date 10 =	d% =
U =	Date 11 =	e% =
	Date 12 =	
V =	Date 13 =	
	Date 14 =	
	Date 15 =	
A =	Date 16 =	
B =	Date 17 =	
C =	Location 1 =	
	State 1 =	
D =		
E =		
F =		

Dear :

This letter is in response to your letter dated August 31, 2004 and subsequent correspondence, submitted on behalf of U, requesting rulings under §§ 29 and 702 of the Internal Revenue Code.

FACTS

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

P received PLR-100240-98 on Date 1, PLR-111447-00 on Date 2, PLR-126688-03 on Date 3, and PLR-111615-04 on Date 4 (Prior Rulings), which ruled on the issues addressed by this letter. P seeks a confirmation of those rulings in light of the sales of membership interests in P to U and V.

P is a Delaware limited liability company, taxable as a partnership. P owns and operates the Facility for producing a solid synthetic fuel from coal (the Product) using the process described below. The Facility was constructed by P. The Facility is a Secondary Coal Recovery System #2000 facility designed by A. The Facility consists of three production lines each of which consists of a briquetter that 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 construction contract entered into by A and B on Date 5. A assigned to P all of its rights and obligations under the construction contract with respect to one facility. On Date 6, B contracted 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 7, P received a favorable determination from the District Director for the State 1 District that the Facility was placed-in-service prior to July 1, 1998. On Date 8, X purchased an interest in P from D pursuant to a Purchase Agreement, as amended on Date 9. Y purchased the remaining interest in P from A on Date 10 pursuant to a Purchase Agreement. Effective Date 11, X sold a z% interest in P to its subsidiary Z pursuant to an Agreement for Purchase of Membership Interest. In exchange for the z% interest in P, Z paid to X an amount of cash at closing and Z is obligated to make certain fixed and variable payments to X. For the period from the sale until the closing of the transaction on Date 13 described below, Z owned z% of the interests in P, and X and Y owned an x% and y% interest, respectively, in P.

P relocated the Facility to a site in Location 1 (the Site), which is owned by E, an affiliate of F. In connection with the relocation of the Facility, most major components of the Facility directly necessary to produce a qualified fuel were relocated to the Site. Certain equipment included in the original construction was scrapped or sold and not relocated. In connection with the relocation, P also installed certain equipment that is not directly necessary for the production of qualified fuel such as a maintenance building, office trailer, shower/locker trailer, and coal and material handling equipment.

Following the relocation, the fair market value of the original property included in the Facility is more than 20% of the Facility's total value (the cost of the new equipment included in the Facility plus the value of the original property).

P has entered into a Synthetic Fuel and Coal Supply Agreement with E under which E agreed to purchase a minimum of Amount 1 tons of synthetic fuel a year and to use commercially reasonable efforts to purchase up to Amount 2 tons of synthetic fuel a year. If E does not satisfy its purchase obligation or the production of synthetic fuel exceeds E's requirements, P can sell synthetic fuel to third parties. P has represented that all sales of synthetic fuel will be to unrelated persons.

On Date 12, X agreed to sell a w% interest in P to W. Following the closing of the sale on Date 13, W owned w%, X owned a%, Y owned y%, and Z owned z% of P. In exchange for the w% interest in P, W paid to X an amount of cash at closing and W is obligated to make certain fixed and variable payments to X. P has provided projections based on expected operations that the net present value of the contingent payments to be made to X under the Agreement for Purchase of Membership Interest will be less than fifty percent of the total payments made to X.

On Date 14, Z sold a w% membership interest in P to U pursuant to an Agreement for Purchase of Membership Interest. Following the closing of the sale, W owned w%, X owned a%, Y owned y%, Z owned b% and U owned w% of P. In exchange for the w% membership interest in P, U paid to Z an amount of cash at closing and U is obligated to make certain fixed and variable payments to Z. P has provided projections based on expected operations that the net present value of the contingent payments to be made to Z under the Agreement for Purchase of Membership Interest will be less than fifty percent of the total payments made to Z.

On Date 15, Z sold a b% membership interest in P to V pursuant to an Agreement for Purchase of Membership Interest. Following the closing of the sale, W owns w%, X owns a%, Y owns y%, U owns w% and V owns b% of P. Z no longer owns a membership interest in P. In exchange for the b% membership interest in P, V paid to Z an amount of cash at closing and V is obligated to make certain fixed and variable payments to Z. P has provided projections based on expected operations that the net present value of the contingent payments to be made to Z under the Agreement for Purchase of Membership Interest will be less than fifty percent of the total payments made to Z under the Agreement for Purchase of Membership Interest.

On or by Date 16, V will purchase a c% membership interest in P from X and Y. Following the closing of the sale, W will own w%, Y will own d%, U will own w% and V will own e% of P. If the closing of the sale occurs prior to Date 17, a termination of P will occur under § 708(b)(1)(B). X will no longer own a membership interest in P. In exchange for the c% membership interest in P, V will pay to X and Y an amount of cash at closing and V 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 X and Y 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. W, Y, U and V have made and will 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.

P has supplied a detailed description of the process employed at the Facility. P also has proposed that, from time to time, one of four 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 similar analysis by experts to be a significant chemical change.

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

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

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

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

(4) The § 29 credit attributable to P may be allocated to the members of P in accordance with the members’ interest in P when the credit arises. Each such member will take into account its allocated share of the § 29 credit in computing its tax liability, and for the allocation of the § 29 credit, a member’s interest in P is determined based on a valid allocation of receipts from the sale of the § 29 qualified fuel.

(5) 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.

(6) Because the 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 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 § 29 provided the fair market value of the original property is more than 20% of 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 § 29(g)(1), relocation of one or more of the independent production lines of the Facility to a new location after June 30, 1998, will not result in a new placed-in-service date for the Facility or an independent production line for purposes of § 29 provided all essential components of the independent production line are retained and the production capacity of the independent production line is not significantly increased at the new location.

The changes in facts since the issuance of the Prior Rulings are the sale of an Interest in P to U, the sales of Interests in P to V, and the change in chemical reagent used to produce the synthetic fuel as described in the ruling request and subsequent correspondence from P’s authorized representative.

The rulings issued in the Prior Rulings are not affected by the sale of an Interest in P to U, the sales of Interests in P to V, and the change in chemical reagent used to produce the synthetic fuel as described in the ruling request and subsequent correspondence from P’s authorized representative.

RULING REQUESTS 1 & 3

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 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.

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 5

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 REQUEST 6

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. As discussed above, P received a favorable determination from the District Director for the State 1 District that the Facility was placed in service prior to July 1, 1998.

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 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, 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).

RULING REQUEST 7

To qualify the § 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. P received a favorable determination from the District Director for the State 1 District that the Facility was placed-in-service prior to July 1, 1998.

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 a

production line would be relocated if a 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, we conclude as follows:

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

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

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

(4) The § 29 credit attributable to P may be allocated to the members of P, consisting of W, U, V and Y, in accordance with the members' interests in P when the credit arises. Each such member will take into account its allocated shares of the § 29 credit in computing its tax liability, and for the allocation 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.

(5) 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.

(6) Because the 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 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 purpose 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 the relocation or replacement. The relocation of a Facility and the replacement of parts 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 prior to July 1, 1998.

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

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 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. 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 your authorized representative.

Sincerely,

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

cc: