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Legend

A	=	
B	=	
C	=	
D	=	
E	=	
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I	=	
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Date 1	=	
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Date 5	=	
Date 6	=	
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Date 16	=	
Date 17	=	
Year 1	=	

Binder 1 =
X =

Y =
Z =
Site X =
Site Y =
Operator =
Ruling 1 =
Ruling 2 =
State X =
a =
b =
c =
d =
e =
f =
g =
o =
p =
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r =
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Dear :

This letter responds to a letter, dated August 11, 2003, 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 partnership. A owns a Facility for the production of solid Synthetic Fuel from coal. B is an Illinois limited liability company and as general partner of A, owns an o capital interest and a p profits interest in A.

C, D, and E are limited partners in A. C, a Delaware limited liability company, owns a q capital interest and an r profits interest. D, owner of an s capital interest and a t profits interest in A, is a State X corporation. E, a Delaware corporation, owns a u capital interest and a v profits interest in A. A allocates receipts from the sale of Synthetic Fuel among its partners in accordance with the profits interests of C,D, and E as set forth in A's partnership agreement.

C is owned in w percent by F and in x percent by G. F is a Delaware corporation and is a wholly-owned subsidiary of H. G is a Delaware LLC and its sole owner is I. G is a disregarded entity for federal income tax purposes. C allocates receipts from the sale of Synthetic Fuel among its members in accordance with the membership interests of F and G as set forth in C's membership agreement.

Prior to the current partnership structure, X served as general partner. On Date 1, X was notified of the limited partners' desire to replace X as general partner. On Date 2, B was formally appointed as general partner.

Under the original partnership agreement, E and J were the only limited partners. On Date 3, E and J entered into an Option Agreement with D, giving D the option to purchase a y capital interest from E and a z capital interest from J. D exercised its option on Date 4, when it entered into a Purchase and Sales Agreement with E and J to purchase the aforementioned interests for a.

Recently, on Date 5, J transferred its remaining limited partnership interest to in A to C, which it owned with F. This was pursuant to the Operating Agreement of C. Shortly thereafter, on Date 6, J sold to G the interest in C which G currently holds. Under the Purchase Agreement, the purchase price for the interest consists of an initial payment of b, followed by a series of contingent and non-contingent payments. Taxpayer represents that, based on the expected operations of the facility, the net present value of the contingent payments to be made to J under the purchase agreement will be less than 50 percent of the total payments made to J under the purchase agreement.

On Date 7, X sought a private letter ruling regarding the planned Facility at Site X. The Service issued Ruling 1 on Date 8. The Facility was built pursuant to a Construction Contract entered into on Date 9 between X and Y. Construction of the Facility was completed on Date 10. The Facility was initially located at Site X.

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. The Taxpayer represents that the Construction Contract was binding and enforceable against the parties under the applicable state law at the time it was executed and was not modified or amended, except for certain described change orders.

In Year 1, the Facility was transferred from X to Z. Following the transfer, X requested a letter ruling on Date 11 and Ruling 2 was issued on Date 12. A subsequently acquired the Facility from Z on Date 13.

As a result of the high costs of operating the Facility at Site X, A decided to move the Facility from Site X to Site Y. 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 14, A completed the relocation of the Facility from Site X to Site Y. This relocation occurred because of A's inability to obtain sufficient coal feedstock at 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, the only essential component of Site X that is not retained at Site Y is the dryer, which was necessary at Site X due to insufficient drying capabilities and inadequate clean coal fines, but is not necessary at Site Y, where such conditions do not exist. Finally, the relocation of the Facility from Site X to Site Y has not significantly increased the production capacity of the Facility.

Taxpayer has supplied a detailed description of the process employed by the Facility. Recognized experts in coal combustion chemistry have performed numerous tests on the coal used at the Facility and the Synfuel produced at the Facility and have submitted reports in which the experts conclude that significant chemical changes take place with the application of the process to the coal. Taxpayer, with use of this 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.

A is now using Binder 1 to reduce costs and because petroleum-based binders are commonly used in the Synthetic Fuel industry. Use of the new binder has not increased the production output of the Facility. Taxpayer has also proposed that, in the future, A may experiment with other binders or Feedstock in an effort to improve the Synthetic Fuel it produces and reduce its costs. However, no opinion is expressed regarding reagents for which no chemical change reports have been submitted.

Under an Operating Agreement, Operator will provide services to A in connection with management, operation, maintenance, and repair of the Facility at Site Y. The Operating Agreement, dated Date 15, has a term of one year, automatically renewed unless terminated by either party. For the performance of services, Operator is paid $c per month, along with a management fee based on monthly Synthetic Fuel production at the Facility.

On Date 3, A entered into a Site Lease Agreement for Site Y with D for a term lasting to the earlier of Date 16 or the date on which the Synthetic Fuel produced at Facility ceases to constitute a “qualified fuel” for purposes of § 29. The site lease can also terminate upon written notice from D to A or termination of the Synthetic Fuel Sales

Agreement. Upon termination of the Site Lease, A is responsible for restoring Site Y to substantially the same condition.

The feedstock for the Facility at Site Y is provided by D to A pursuant to a Feedstock Agreement dated Date 17. Under the agreement, A agrees to purchase all of its coal requirements for the Facility from D. In the event that D fails to supply A with a sufficient supply of coal feedstock, A may purchase its necessary supply from other providers. However, upon such purchase, D must reimburse A for the difference in purchase price. Under the agreement, the purchase price of each ton of coal is the monthly weighted average inventory cost of D's coal pile. This agreement terminates upon the earlier of Date 16 and the date on which the Synthetic Fuel produced at Facility ceases to constitute a "qualified fuel" for purposes of § 29.

In conjunction with the Feedstock Agreement, A and D entered into a Synthetic Fuel Sales Agreement dated Date 17. Under the agreement, D will purchase all Synthetic Fuel produced by A at the Facility at Site Y up to d tons per year. Beyond that amount, D has the option to purchase any excess Synthetic Fuel produced by A. The purchase price of each ton of the Synthetic Fuel will be the monthly per ton weighted average inventory cost of the Facility's untreated coal less e per ton. The Synthetic Fuel sales agreement terminates upon the earlier of Date 16 and the date on which the Synthetic Fuel produced at Facility ceases to constitute a "qualified fuel" for purposes of § 29.

In addition, the Synthetic Fuel sales agreement contains a liquidated damages provision. If the amount of Synthetic Fuel purchased by D is less than f tons, then D must pay liquidated damages to A. Under the agreement, liquidated damages are subject to a g per ton limit. However, if A is able to sell the additional Synthetic Fuel to a substitute buyer for the same or a higher price, no liquidated damages will be due. Further, if A has an opportunity to sell Synthetic Fuel at a higher price, D has a right of first refusal to purchase the Synthetic Fuel at the higher price. A represents that it will not sell Synfuel to any related party.

The rulings requested by A are as follows:

(1) 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 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 it was placed in a condition or state

of readiness and availability for its specifically assigned function (as described in the Income Tax Regulations sections 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 A within the meaning of section 29(a)(2)(B), and A will be allowed the credit as determined under section 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 section 29(g)(1) prior to July 1, 1998, neither the relocation of the Facility after June 30, 1998 nor replacement of parts or other capital improvements after that date will 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 for purposes of Section 29. In addition, any future relocations of the Facility to different sites, or the replacement of parts of the Facility, 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 for purposes of section 29 if the fair market value of the original property that is incorporated into the Facility exceeds 20% of the total fair market value of the Facility immediately following the relocation or replacement.

(6) Any section 29 credit allowed to A may be passed through to and allocated among the partners of A under the principles of section 702(a)(7) in accordance with the partners' interest in A at the time the section 29 credits are allowed. For purposes of the section 29 credit, a partner's interest in A is determined based on a valid allocation of the receipts from the sale of the section 29 credit Synthetic Fuel.

(7) Any section 29 credit allowed to C may be passed through to and allocated among the members of C under the principles of section 702(a)(7) in accordance with the members' interest in C at the time the section 29 credits are allowed. For purposes of the section 29 credit, a member's interest in C is determined based on a valid allocation of the receipts from the sale of the section 29 credit Synthetic Fuel.

(8) Provided the Facility was "placed in service" within the meaning of section 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 A terminates

or is reconstituted within the meaning of section 708(b) after a sale or exchange of partnership interests in A.

(9) Provided the Facility was "placed in service" within the meaning of section 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 terminates or is reconstituted within the meaning of section 708(b) after a sale or exchange of membership interests in C.

RULING REQUEST #1 and #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 Service ruled that the definition of the term "Synthetic Fuel" under section 48(l) and its regulations is relevant to the interpretation of the term under section 29(c)(1)(C). Former section 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 section 29 and former section 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 section 1.48- 9(c)(5)(ii) of the Income Tax Regulations, a Synthetic Fuel must "differ significantly in chemical composition, as opposed to physical composition, from the alternate substance used to produce it." Coal is an alternate substance under section 1.48-9(c)(2)(i) of the Income Tax Regulations.

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- 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 expert test results submitted by A, we conclude that A, with use of the described process and a specified chemical reagent, 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 Operator, we conclude that A will be entitled to the § 29 credit for the production of 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 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) modifies section 29(f) in the case of a Facility producing qualified fuels described in section 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 section 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, section 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 section 29(g)(1)(A).

RULING REQUESTS #3 and #5

To qualify for the section 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. 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. Sections 1.167(a)- 11(e)(1)(i) and 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. When property is placed in service is a factual determination, and we express no opinion on when the Facility was placed in service.

Rev. Rul. 94-31, 1994-1 C.B. 16, concerns section 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 section 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, provided the Facility was placed in service prior to July 1, 1998, within the meaning of section 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 fair 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 section 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 a 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, each 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. A 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 section 168 of the Code), and other administrative assets.

Consistent with the holding in Rev. Rul. 94-31, provided 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 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 #6 and #7

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 section 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 section 704 and section 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 section 38 property) are not reflected by adjustments to the partners' capital accounts. Thus, these allocations cannot have economic effect under section 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 section 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 section 29 credit attributable to A may be allocated among the partners of A under the principles of section 702(a)(7) in accordance with each partner's interest in A as of the time the credit arises. For purposes of the section 29 credit, a partner's interest in A is determined based on a valid allocation of the receipts from the sale of the section 29 credit qualified fuel.

Similarly, we conclude that the credit attributable to C, as a partner of A, may be passed through to and allocated among the members of C under the principles of section 702(a)(7) in accordance with each member’s interest in C as of the time the credit arises. For purposes of the section 29 credit, a member's interest in C is determined based on a valid allocation of the receipts from the sale of the section 29 credit qualified fuel.

RULING REQUEST #8 and #9

The section 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 section 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 section 29 credit four times. The placed-in-service deadline and the period for claiming the section 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 section 44D that Congress intended the credit to apply to facilities placed in service after 1979, and that the placed-in-service deadline in section 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 sections 29(f) and 29(g) focus on the Facility, and not the owner of the Facility. The legislative history of section 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 section 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 section 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 section 708(b)(1)(B) occurring on or after May 9, 1997.

As discussed above, the placed-in-service deadline in sections 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 sections 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 sections 29(f)(1)(B) and 29 (g)(1)(A) is determined 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 section 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 section 29 for the new owner. Further, a termination of A under section 708(b)(1)(B) will not preclude the reconstituted partnership from claiming the section 29 credit for the production and sale of Synthetic Fuel to unrelated persons after a sale or exchange of the partnership interests in A. Likewise, a termination of C under section 708(b)(1)(B) will not preclude the reconstituted membership from claiming the section 29 credit for the production and sale of Synthetic Fuel to unrelated persons after a sale or exchange of the membership interests in C.

Accordingly, based on the representations of A and A's authorized representative, we conclude as follows:

(1) 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 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 it was placed in a condition or state of readiness and availability for its specifically assigned function (as described in Regulations sections 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 A within the meaning of section 29(a)(2)(B), and A will be allowed the credit as determined under section 29 for Synthetic Fuel produced by the Facility and sold to unrelated persons.

(5) Provided the Facility was "placed in service" within the meaning of section 29(g)(1) prior to July 1, 1998, neither the relocation of the Facility after June 30, 998 nor replacement of parts or other capital improvements after that date will 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 for purposes of Section 29 provided that the fair market value of the original property that is incorporated into te Facility exceeds 20% of the total fair market value of the Facility immediately following the relocation or replacement. In addition, any future relocations of the Facility to different sites, or the replacement of parts of the Facility, 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 for purposes of section 29 if the fair market value of the original property that is incorporated into the Facility exceeds 20% of the total fair market value of the Facility immediately following the relocation or replacement.

(6) Any section 29 credit allowed to A may be passed through to and allocated among the partners of A under the principles of section 702(a)(7) in accordance with the partners' interest in A at the time the section 29 credits are allowed. For purposes of the section 29 credit, a partner's interest in A is determined based on a valid allocation of the receipts from the sale of the section 29 credit Synthetic Fuel.

(7) Any section 29 credit allowed to C may be passed through to and allocated among the members of C under the principles of section 702(a)(7) in accordance with the members' interest in C at the time the section 29 credits are allowed. For purposes of the section 29 credit, a member's interest in C is determined based on a valid allocation of the receipts from the sale of the section 29 credit Synthetic Fuel.

(8) Provided the Facility was "placed in service" within the meaning of section 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 A terminates or is reconstituted within the meaning of section 708(b) after a sale or exchange of partnership interests in A.

(9) Provided the Facility was "placed in service" within the meaning of section 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 terminates or is reconstituted within the meaning of section 708(b) after a sale or exchange of partnership interests in C.

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 or facilities that are the subject of this letter, (ii) obtain regular reports from independent laboratories that have analyzed the fuel produced in such Facility or facilities 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.

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 the Facility was placed in service for purposes of section 29.

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, I.R.B. 2002-1. 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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer's representative.

Sincerely,

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