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Date:
July 16, 2013

LEGEND:

Taxpayer	=
Operating Company	=
Company A	=
Company B	=
Company C	=
Parent	=
Company X	=
Company Y	=
Company Z	=
State	=
Utility	=
Licensor	=
Center	=
Additive 1	=
Additive 2	=
Source region	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
a	=
b	=
c	=
d	=
e	=

Dear :

This letter is in response to your request for rulings dated , submitted by your authorized representatives, concerning the federal income tax consequences of the transaction described below.

Background

Taxpayer, a State limited liability company, has elected to be taxable as a corporation for Federal tax purposes, effective Date 2. Taxpayer is the sole member of Operating Company, a State limited liability company that is disregarded from Taxpayer for Federal income tax purposes. Taxpayer is a wholly-owned subsidiary of Company A, which is wholly-owned by Company B. Company B is wholly-owned by Parent, which is the holding company for a number of operating companies engaged in energy-related businesses, including the sale and transportation of coal throughout the United States. Company C is a State limited liability company that is wholly-owned by and disregarded from Company A. Parent and its affiliates are calendar year taxpayers and employ the accrual method of accounting for book and tax purposes.

The Facility

The Facility is a single production line that was originally constructed as part of a larger facility but is capable of being operated as a separate unit to produce refined coal. It was originally constructed for Company X with final completion on Date 1. On Date 3, the Facility was sold to Company Y and on Date 5, Company Y filed a request with State to change its name to Operating Company.

On Date 7, Operating Company entered into an engineering, procurement and construction contract to relocate the Facility to the Utility. The relocation of the Facility was complete on Date 8. The Utility is owned and operated by Company Z, and is composed of a coal-fired generating units each with an electric generating capacity of approximately b megawatts and it consumes approximately c million tons of coal a year.

Operating Company has entered into various agreements with Company Z with respect to the installation and operation of the Facility at a portion of the Utility site. The parties entered into a License and Service Agreement, pursuant to which Operating Company has the right to place the Facility on the Utility's site, and has access to support services, such as utility connections, necessary to operate the Facility. This agreement also allows Operating Company to operate the Facility under certain permits and approvals issued to Company Z.

Operating Company has also entered into a Coal Handling and Consulting Agreement with Company Z pursuant to which Company Z acts as coal consultant to perform services necessary to locate, purchase, transport, and handle an adequate supply of coal to ensure that Operating Company uses coal that conforms to set coal specifications, to allow it to satisfy its obligations under the Refined Coal Supply Agreement. Similarly, under a Coal Feedstock Purchase Agreement, Operating Company will purchase the amount of feedstock coal required to enable Operating Company to fulfill its obligations to Company Z under the Refined Coal Supply Agreement.

Operating Company has also entered into a Refined Coal Supply Agreement with Company Z under which Company Z purchases all of its requirements for coal and coal-based fuel from Operating Company. All of the refined coal produced in the Facility is expected to be used as a fuel by the Utility to produce steam for the generation of electricity. However, any refined coal not purchased by the Utility can be sold to one or more third parties.

Finally, Operating Company has entered into an Operation and Maintenance Agreement with Company C pursuant to which Company C will operate and maintain the Facility according to certain specified operating protocols and standards. Company C also entered into an agreement with a third party to provide the labor necessary for the operation and maintenance of the Facility. Taxpayer, as manager of the Operating Company, will arrange for the testing of the refined coal as described below.

The Facility is capable of being relocated without affecting its capability to produce refined coal. In the future, the Facility may be disassembled and relocated to another location. Such relocations of refined coal facilities are a routine exercise that can be accomplished with only limited duplication of certain common equipment and civil works and foundations, which are relatively minor in the context of these projects. In the event of any relocation of the Facility, all of the essential components of the Facility will be relocated and retained.

Description of the Process

The process at issue for production of refined coal currently employed at the Facility involves the mixing of proprietary chemicals (additives) with feedstock coal prior to combustion (the Process). The patent for the Process is owned by Licensor and is licensed to Operating Company. Test results have shown that when mixed with coal, the proprietary additives result in reduced NO_x, SO_2, and mercury emissions during combustion. Different chemicals are targeted at specific pollutants. Based on the characteristics of the feedstock coal burned at the Utility, a combination of additives has been chosen that target the reduction of NO_x and mercury. In the case of NO_x, Operating Company understands that the Additive 1 is believed to cause a portion of the NO_x to adhere to, or react with, the additive so that it can be captured and is not emitted. In the case of mercury, Operating Company understands that the Additive 2 is

believed to react with the elemental mercury in the feedstock coal so that it is converted into a chemical species of mercury (mercury oxide) that can be effectively captured by particulate control devices.

Emissions Reduction Testing

On behalf of Operating Company, Company B engaged the research center of a prominent university (the Center) to conduct tests at its pilot-scale combustion test furnace (CTF) to determine the emission reductions associated with burning the refined coal compared to the feedstock coal. The Center reports described below state:

> The CTF has been extensively used to research and investigate SO_x and NO_x emissions and the transformation of toxic trace metals (Hg [mercury], As, and Pb) during the combustion of coal and other fuels or waste materials. The CTF is capable of producing gas and particulate samples that are representative of those produced in industrial and full-scale pulverized coal (pc)-fired boilers.

For purposes of qualifying the refined coal produced at the Facility, the Center conducted pilot-scale combustion tests at its CTF. Specifically, on Date 4 and Date 6, the Center conducted tests on the feedstock coal of the type typically burned at the Utility. Because the Facility was not yet operational at the time of the tests, the Center reports that it mixed the feedstock coal and additives in a manner consistent with the mixing that would occur at the Facility.

Each test report explains that combustion gas analysis is provided by continuous emissions monitors (CEMs) at two locations: the furnace exit, which is used to monitor and maintain a specified excess air level for all test periods, and the outlet of the particulate control device, which is used to assess any air inleakage that may have occurred so that emissions of interest sampled at the back end of the system can be corrected for the dilution caused by the inleakage. Flue gas analyses were obtained from the duct at the outlet of the electrostatic precipitator (ESP). Flue gas mercury measurements were obtained separately by a continuous mercury monitor located at the flue gas ducting at the exit of the particulate control device. The Center conducted a series of tests on the feedstock coal and refined coal blends, measuring the emissions with these devices.

Each test report states that the test results indicate that the refined coal samples achieved the required reductions in both NO_x and total mercury emissions (both determined on a lb/Btu basis) to satisfy the requirements of at least twenty percent (20%) NO_x reduction and at least forty percent (40%) mercury reduction. Each test report states that it is “expected that [qualifying reductions/the emissions reductions

reported here] would be achieved at full scale by using these treatment rates during the production of the refined coal."

Tested Coal

Currently, the Utility only burns coal from within the source region. Operating Company intends to produce the refined coal exclusively using coal from within the source region (the Tested Coal). The rank of the coal burned by the Utility is classified by the American Society of Testing Materials (ASTM) as subbituminous coal with a gross calorific value of d to e btu/lb.

Company B requested that the Center test the source region coal to be used by Operating Company to produce refined coal that will be burned to produce steam by the Utility. Accordingly, the Center tested the source region coal, and in each case, the report issued by the Center states that refined coal produced with this source region coal met the required emissions reduction requirements when compared to the feedstock coal.

Operating Company expects to continue to operate with the source region coal and additive levels discussed in the Center reports, which would be consistent with long-term patterns for coal consumed by the Utility. If so, samples will be taken for redetermination testing within six months after the last emissions test satisfying the qualified emission reduction requirement. Thereafter, within six months after such date, another set of samples will be taken for redetermination testing. In each case, samples of feedstock and samples of refined coal will be collected and prepared in accordance with sampling and testing procedures set forth in Operating Company's operating protocols. Although testing and preliminary reporting is done timely, occasionally the Center is not able to issue the final report until after the six-month period.

Although Operating Company does not currently anticipate making changes to its coal feedstock or additive levels, or using other coal sources or ranks, additional testing will be conducted prior to acquiring coal feedstock from a different coal source region or of a different rank than reflected in the Tested Coal. In the case of a change in the additive levels, tests will also be run at the new minimum levels of additive as a qualified expert advises is necessary to conclude that a qualified emissions reduction will be expected for the new levels of additive.

In addition, in the future, Operating Company may collect and test weekly grab samples of each of the feedstock and refined coal to determine the sulfur and mercury content of the samples. If such samples are collected, a rolling six-month average of the laboratory analyses would be computed to determine whether there has been a change of the sulfur or mercury content of more than ten percent (10%) below the bottom of the range or more than ten percent (10%) above the top of the range of sulfur content and the range of the mercury content of the feedstock coal and the refined coal samples used in the most recent pilot-scale testing conducted at the Center or a similar

pilot-scale combustion testing facility under Notice 2010-54 that satisfied the qualified emission reduction test of § 45(c)(7)(B).

RULINGS REQUESTED

Based on the foregoing, you have requested that we rule as follows:

1. The refined coal produced by using the Process constitutes "refined coal" within the meaning of § 45(c)(7) of the Internal Revenue Code, provided that such refined coal is produced by Operating Company from feedstock coal that is the same source or rank as the Tested Coal and provided further that the refined coal satisfies the qualified emission reduction test stated in § 45(c)(7)(B).

2. Provided that the feedstock coals used to produce refined coal during any determination period are from the same coal source regions and of the same rank as the Tested Coal, all feedstock coal that satisfies that criteria shall be treated as feedstock coal of the same source and rank for purposes of section 6.04 of Notice 2010-54, regardless of the mine from which such feedstock coal is purchased.

3. Testing by the Center for qualified emissions reduction as set forth in its test reports satisfies the requirements of Notice 2010-54. Operating Company may rely on the pilot-scale testing conducted at the Center or a similar pilot-scale combustion testing facility under Notice 2010-54 (and subsequent permitted laboratory testing as required for a redetermination described in section 6.04(2)(a) or (b) of Notice 2010-54) to satisfy the qualified emission reduction test of § 45(c)(7)(B) regardless of subsequent normal fluctuations in operating conditions and emissions at the Utility.

4. The results set forth by the Center in a redetermination test report for production may be relied upon after the date of the testing even if the report is not received until after the six-month period specified in section 6.04(1)(i) of Notice 2010-54.

5. Pursuant to section 6.04(2)(b) of Notice 2010-54, Operating Company may satisfy the redetermination requirement of section 6.04 of Notice 2010-54 by laboratory analysis establishing that the sulfur and mercury content of both the feedstock coal and the refined coal, on average, do not vary by more than ten percent (10%) below the bottom of (nor more than ten percent (10%) above the top of) the range of sulfur content and the range of the mercury content of the feedstock coal and the refined coal used in the most recent determination that meets the requirements of section 6.03 of Notice 2010-54.

6. Provided the Facility was "placed in service" prior to January 1, 2012, within the meaning of § 45(d)(8), relocation of the Facility to a different location or replacement

of a part of the Facility will not result in a new placed in service date for purposes of § 45 provided the fair market value of the original property incorporated into the Facility is more than twenty percent (20%) of the Facility's total fair market value immediately following completion of the relocation or replacement.

LAW AND RATIONALE

Section 45(a) generally provides a credit against federal income tax for the use of renewable or alternative resources to produce electricity or fuel for the generation of steam. Section 45(e)(8) provides that, in the case of a producer of "refined coal," the credit available under § 45(a) for any taxable year shall be increased by an amount equal to $4.375 per ton of qualified "refined coal" (i) produced by the taxpayer at a "refined coal production facility" during the 10-year period beginning on the date that the facility was originally placed in service, and which is (ii) sold by the taxpayer to an unrelated person during such ten-year period and such taxable year.

For purposes of § 45, section 3.01 of Notice 2010-54 (the Notice) provides that the term "refined coal" means a fuel which – (i) is a liquid, gaseous, or solid fuel (including feedstock coal mixed with an additive or additives) produced from coal (including lignite) or high carbon fly ash, including such fuel used as a feedstock, (ii) is sold by the taxpayer with the reasonable expectation that it will be used for the purpose of producing steam, and (iii) is certified by the taxpayer as resulting (when used in the production of steam) in a qualified emission reduction. Section 3.04 of the Notice provides that the term "qualified emission reduction" means, in the case of refined coal produced at a facility placed in service after December 31, 2008, a reduction of at least twenty percent (20%) of the emissions of nitrogen oxide and at least forty percent (40%) of the emissions of either sulfur dioxide or mercury released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003.

Section 45(d)(8) generally provides that the term "refined coal production facility" means a facility which is placed in service after October 22, 2004 and before January 1, 2012.

Section 6.01 of the Notice generally provides that a qualified emissions reduction does not include any reduction attributable to mining processes or processes that would be treated as mining (as defined in § 613(c)(2), (3), (4)(A), (4)(C), or (4)(I)) if performed by the mine owner or operator. Accordingly, in determining whether a qualified emission reduction has been achieved, the emissions released when burning the refined coal must be compared to the emissions that would be released when burning the feedstock coal. Feedstock coal is the product resulting from processes that are

treated as mining and are actually applied by a taxpayer in any part of the taxpayer's process of producing refined coal from coal.

Section 613(c)(5) describes treatment processes that are not considered as mining unless they are provided for in § 613(c)(4) or are necessary or incidental to a process provided for in § 613(c)(4). Any cleaning process, such as a process that uses ash separation, dewatering, scrubbing through a centrifugal pump, spiral concentration, gravity concentration, flotation, application of liquid hydrocarbons or alcohol to the surface of the fuel particles or to the feed slurry provided such cleaning does not change the physical or chemical structure of the coal, and drying to remove free water, provided such drying does not change the physical or chemical identity of the coal, will be considered as mining.

Section 6.03(1) of the Notice provides, in part, that emissions reduction may be determined using continuous emission monitoring system (CEMS) field testing. Section 6.03(a)(1) provides, in part, that CEMS field testing is testing that meets all the following requirements: (i) the boiler used to conduct the test is coal-fired and steam-producing and is of a size and type commonly used in commercial operations; (ii) emissions are measured using a CEMS; (iii) if EPA has promulgated a performance standard that applies at the time of the test to the pollutant emission being measured, the CEMS must conform to that standard; (iv) emissions for both the feedstock coal and the refined coal are measured at the same operating conditions and over a period of at least 3 hours during which the boiler is operating at a steady state at least ninety percent (90%) of full load; and (v) a qualified individual verifies the test results in a manner that satisfies the requirement of section 6.03(1)(b).

Section 6.03(2) of the Notice provides that methods other than CEMS field testing may be used to determine the emission reduction. The permissible methods include (a) testing using a demonstration pilot-scale combustion furnace if it establishes that the method accurately measures the emission reduction that would be achieved in a boiler described in section 6.03(1)(a)(i) of the Notice and a qualified individual verifies the test results in a manner that satisfies the requirements of section 6.03(1)(c)(i), (ii), (v) and (vi); and (b) a laboratory analysis of the feedstock coal and the refined coal that complies with a currently applicable EPA or ASTM standard and is permitted under section 6.03(2)(b)(i) or (ii) of the Notice.

Section 6.04(1) of the Notice provides that a taxpayer may establish that a qualified emission reduction determined under section 6.03 applies to production from a facility by a determination or redetermination that is valid at the time the production occurs. A determination or redetermination is valid for the period beginning on the date of the determination or redetermination and ending with the occurrence of the earliest of the following events: (i) the lapse of six months from the date of such determination or redetermination; (ii) a change in the source or rank of the feedstock coal that occurs after the date of such determination or redetermination; or (iii) a change in the process

of producing refined coal from the feedstock coal that occurs after the date of such determination or redetermination.

Section 6.04(2) of the Notice provides that in the case of a redetermination required because of a change in the process of producing refined coal from the feedstock coal, the redetermination required under section 6.04 must use a method that meets the requirements of section 6.03. In any other case, the redetermination requirement may be satisfied by laboratory analysis establishing that – (a) the sulfur or mercury content of the amount of refined coal necessary to produce an amount of useful energy has been reduced by at least twenty percent (20%)(forty percent (40%), in the case of facilities placed in service after December 31, 2008) in comparison to the sulfur or mercury content of the amount of feedstock coal necessary to produce the same amount of useful energy, excluding any dilution caused by materials combined or added during the production process; (b) the sulfur or mercury content of both the feedstock coal and the refined coal do not vary by more than ten percent (10%) from the sulfur and mercury content of the feedstock coal and refined coal used in the most recent determination that meets the requirements of the Notice.

Section 6.05 of the Notice provides that the certification requirement of section 3.01(1)(c) of the Notice is satisfied with respect to fuel for which the refined coal credit is claimed only if the taxpayer attaches to its tax return on which the credit is claimed a certification that contains the following: (1) a statement that the fuel will result in a qualified emissions reduction when used in the production of steam; (2) a statement indicating whether CEMS field testing was used to determine the emissions reduction; (3) if CEMS field testing was not used to determine the emissions reduction, a description of the method used; (4) a statement that the emissions reduction was determined or redetermined within the six months preceding the production of the fuel and that there have been no changes in the source or rank of the feedstock coal used in the process of producing refined coal from feedstock coal since the emissions reduction was most recently determined or redetermined; and (5) a declaration signed by the taxpayer in the following form: “Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief, it is true, correct, and complete.”

Finally, § 45(d)(8) provides that a refined coal production facility must be placed in service within certain timeframes. For purposes of the refined coal credit allowable with respect to refined coal other than steel industry fuel, the facility must be placed in service after October 22, 2004 and before January 1, 2012. Section 3.07 of the Notice provides that the year in which property is placed in service is determined under the principles of § 1.46-3(d) of the regulations; *i.e.,* when the property is placed in a condition or state of readiness and availability for a specifically assigned function. Section 5.02 of the Notice provides that a refined coal production facility will not be treated as placed in service after October 22, 2004 if more than twenty percent (20%) of the facility’s total value (the cost of the new property plus the value of the used property) is attributable to property placed in service on or before October 22, 2004. The Notice

also states that the IRS will not issue private letter rulings relating to when a refined coal production facility has been placed in service.

Issue One

The Process starts with chemical additives being added to the feedstock coal prior to its combustion in a furnace. The additives provide a chemical structure that results in the reduction of emissions of nitrogen oxide and mercury during combustion. Section 6.01 of the Notice provides generally that a qualified emissions reduction does not include any reduction attributable to mining processes or processes that would be treated as mining if performed by the mine owner or operator. In the instant case, the Process is not a mining process. Further, section 3.01 of the Notice clarifies § 45(c)(7) and specifically provides that refined coal includes feedstock coal mixed with additives. Thus, additive processes that mix certain chemicals or other additives with the coal in order to achieve emissions reductions may qualify for the refined coal production tax credit. Additionally, section 3.03 of the Notice defines comparable coal as coal that is of the same rank as the feedstock coal and that has an emissions profile comparable to the emissions profile of the feedstock coal. Accordingly, we conclude that the coal produced by using the Process constitutes a "refined coal" within the meaning of § 45(c)(7), provided that the refined coal (i) is produced from feedstock coal that is from the same source or rank as the Tested Coal and (ii) satisfies the qualified emission reduction test stated in § 45(c)(7)(B).

Issue Two

The emissions profile of the refined coal product is compared to the emissions profile of either the feedstock coal or a comparable coal predominantly available in the marketplace as of January 1, 2003. Section 3.03 of the Notice provides that a "comparable coal" is defined as coal that is of the same rank as the feedstock coal and that has an emissions profile comparable to the emissions profile of the feedstock coal. Section 6.04 of the Notice provides that a determination or redetermination of a qualified emissions reduction is valid until the occurrence of the earliest of the following events: (i) the lapse of six months from the date of such determination or redetermination; (ii) a change in the source or rank of the feedstock coal that occurs after the date of such determination or redetermination; or (iii) a change in the process of producing refined coal from the feedstock coal that occurs after the date of such determination or redetermination. Accordingly, we conclude that provided that the feedstock coals during any determination period are from the same coal source region and of the same rank as the Tested Coal, all feedstock coal that satisfies that criteria shall be treated as feedstock coal of the same source region and rank for purposes of section 6.04 of the Notice, regardless of the mine from which such feedstock coal is purchased.

Issue Three

Section 6.03(3) of the Notice provides that any permissible testing method provided for in the Notice can be used in emission testing for any pollutant. That is, a taxpayer can use different testing methods for each of nitrogen oxide, sulfur dioxide or mercury, provided the method used for any pollutant is a permissible method. Section 6.04(1) of the Notice provides that an emission test establishing a "qualified emission reduction" qualifies the refined coal for a six-month period provided there is no change in the process for producing the refined coal or in the source or rank of the feedstock coal. Therefore, a taxpayer must "redetermine" the emission reductions to qualify for the succeeding six-month period using one or more approved methods.

In the instant case, pilot-scale testing by the Center for qualified emissions reductions as provided in the test reports satisfies the requirements of the Notice. Operating Company may rely on the pilot-scale testing conducted at the Center or a similar pilot-scale combustion testing facility under the Notice (and subsequent laboratory testing as required for a redetermination described in section 6.04(2)(a) or (b) of the Notice) to satisfy the qualified emission reduction test of § 45(c)(7)(B). In conducting such tests, the Center conducted tests on the feedstock, and then mixed a separate sample of the feedstock with the additives so that it could conduct tests on the refined coal product. In each of its reports, the Center reported that the test results indicated that the blend of feedstock coal and additives achieved the required emissions reductions.

Based on the foregoing, we conclude that testing by the Center for qualified emissions reductions as set forth in its test reports satisfies the requirements of Notice 2010-54. Operating Company may rely on the pilot-scale testing conducted at the Center or a similar pilot-scale combustion testing facility under Notice 2010-54 (and subsequent permitted laboratory testing as required for a redetermination described in section 6.04(2)(a) or (b) of Notice 2010-54) to satisfy the qualified emission reduction test of § 45(c)(7)(B) regardless of subsequent normal fluctuations in operating conditions and emissions at the Utility.

Issue Four

It is intended that redetermination testing will occur every six months, or more frequently if required pursuant to the Notice. However, the Center is not always able to issue the written report required by section 6.03(2)(a) of the Notice within the six-month period. Thus, although redetermination testing is completed within the six-month period, the report may be received after the six-month period. Nonetheless, the Center informed interested parties of the results of the test on the day of the tests so that it was able to take into account the results of the redetermination within the six-month period. Nevertheless, the delay by the Center in issuing its report cannot be indefinite. Accordingly, we conclude that the results set forth by the Center in a redetermination test report for production may be relied upon after the date of testing even if the report is not received until after the six-month period specified in section 6.04(1)(i) of the Notice, so long as the written report is received within 90 days from the date of testing. The

new six-month period will begin on the date the redetermination test was completed not the date of receipt of the report.

Issue Five

Section 6.04(2) of the Notice provides, in part, that in the case of a redetermination required because of a change in the process of producing refined coal from the feedstock coal, the redetermination required under section 6.04 must use a method that meets the requirements of section 6.03. In any other case, the redetermination requirement may be satisfied by laboratory analysis establishing that the sulfur and mercury content of both the feedstock coal and the refined coal do not vary by more than ten percent (10%) from the sulfur and mercury content of the feedstock coal and refined coal used in the most recent redetermination that meets the requirements of section 6.03 of the Notice. Accordingly, we conclude that pursuant to section 6.04(2)(b) of Notice 2010-54, Operating Company may satisfy the redetermination requirement of section 6.04 of Notice 2010-54 by laboratory analysis establishing that the sulfur and mercury content of both the feedstock coal and the refined coal, on average, do not vary by more than ten percent (10%) below the bottom of (nor more than ten percent (10%) above the top of) the range of the sulfur content and range of the mercury content of the feedstock coal and the refined coal used in the most recent determination that meets the requirements of section 6.03 of Notice 2010-54.

Issue Six

We understand that the Facility may be relocated to another location in the future. In that case, all of the essential components of the Facility will be relocated and retained. Similarly, during the life of the Facility, it may be necessary to replace certain major components. In the event of relocation or replacement of a component, there should be no change in the placed in service date of the Facility as long as the test described in section 5.02 of the Notice has been met. Based on the foregoing, we conclude that provided the Facility was “placed in service” prior to January 1, 2012, within the meaning of § 45(d)(8), relocation of the Facility to a different location after December 31, 2011, 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 § 45 provided the fair market value of the used property is more than twenty percent (20%) of the Facility’s total fair market value at the time of relocation or replacement.

This ruling expresses no opinion about any issue not specifically addressed in this ruling letter, including (1) whether any person has sold refined coal to an unrelated person, or (2) when the Facility was "placed in service." In particular, we express or imply no opinion that the Operating Company has sufficient risks and rewards of the production activity to qualify as the producer of the refined coal. The Service may

challenge an attempt to transfer the credit to a taxpayer who does not qualify as a producer, including transfers structured as partnerships, sales, or leases that do not also transfer sufficient risks and rewards of the production activity.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representative. A copy of this ruling must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides it may not be used or cited as precedent. We are sending a copy of this letter ruling to the Industry Director.

Sincerely,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel (Passthroughs & Special Industries)