Internal Revenue Service

Number: **201826003**
Release Date: 6/29/2018

Index Number: 4121.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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Refer Reply To:
CC:PSI:B07
PLR-130656-17

Date:
March 27, 2018

LEGEND

Taxpayer =

Process =

Place =

Product 1 =

Product 2 =

Dear :

This letter responds to your letter ruling request dated September 27, 2017, and subsequent communications, requesting rulings under § 4121 of the Internal Revenue Code (the Code).

FACTS

According to the facts submitted, Taxpayer has developed Process to convert coal waste from Place into Product 1, a fuel product, and Product 2, an agricultural product. Process significantly alters the physical properties and chemical composition of the coal waste such that Product 1 and Product 2 are physically and chemically different from coal.

The coal waste used in Process has no widespread commercial application. Both Product 1 and Product 2 can be customized during the Process to meet the demands of specific markets or customers.

RULINGS REQUESTED

Taxpayer requests the following rulings:

1. Taxpayer's conversion of coal waste into Product 1 and Product 2 is not a taxable use of coal by a producer under § 4121.

2. Taxpayer's sale of Product 1 is not a taxable sale of coal under § 4121.

LAW

Section 4121(a) of the Code imposes a tax on coal from mines located in the United States sold by the producer.

Section 48.4121-1(a)(1) of the Manufacturers and Retailers Excise Tax Regulations provides generally that the term "producer" means the person in whom is vested ownership of the coal under state law immediately after the coal is severed from the ground. The term also includes any person who extracts coal from coal waste refuse piles or from the silt waste product that results from wet washing (or similar processing) of coal. However, the excise tax does not apply to a producer who either sells or uses the silt waste product without extracting the coal from it. Furthermore, the excise tax does not apply to the sale or use of the silt waste product after any coal has been extracted from it.

The term "coal" is not defined in § 4121 or the regulations. In Holmes Limestone v. U.S., 946 F.Supp. 1310 (N.D. Ohio 1996), aff'd, Nos. 97-3075 and 97-3129, 1998 U.S. App. LEXIS 26755 (6th Cir. 1998), the court noted that the term "coal" under § 4121 refers to coal in its commercial sense. The court further determined that "that which is sold as coal is coal."

ANALYSIS & CONCLUSIONS

Section 4121(a) imposes a tax on the sale or use of coal by a producer. In this case, Taxpayer's use of coal waste in Process and Taxpayer's sale of Product 1 are taxable only if (i) the coal waste or Product 1, as the case may be, is "coal" within the meaning of § 4121(a), and (ii) Taxpayer is a producer within the meaning of § 4121(a). In each instance, both prongs must be satisfied in order for tax to attach.

As noted by the court in Holmes Limestone, the term "coal" means coal in the commercial sense. Since the coal waste that Taxpayer uses as feedstock in Process is not commercially saleable as coal, we conclude that it is not coal within the meaning of § 4121(a).

Product 1 differs significantly in chemical composition from coal and may be customized to meet consumer and market demands. In addition, Product 1 is not commercially saleable as coal. For these reasons, we conclude that Product 1 is not coal within the meaning of § 4121(a).

Section 48.4121-1(a) provides that a "producer" of coal includes any person who extracts coal from coal waste. Here, Process does not constitute extraction of coal from coal waste. During Process, the coal waste undergoes a significant chemical change which alters its physical and chemical properties such that the resulting Product 1 and Product 2 are significantly different in physical and chemical composition from coal. The chemical change occurs at the beginning of Process, and no coal is extracted at any point in Process. Therefore, Taxpayer is not a producer of coal.

Because the coal waste Taxpayer uses in Process is not coal, and because Taxpayer is not a producer, we conclude that Taxpayer's use of coal waste to produce Product 1 and Product 2 is not subject to tax under § 4121(a). Further, because Product 1 is not coal and Taxpayer is not a producer, we conclude that Taxpayer's sale of Product 1 is not subject to tax under § 4121(a).

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In addition, no opinion is expressed or implied concerning the tax consequences of any variation of the process described herein.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Stephanie N. Bland

Stephanie N. Bland
Branch Chief, Branch 7
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

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