Internal Revenue Service

Index Number: 29.00-00
Number: **199906028**
Release Date: 2/12/1999

Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:5-PLR-113093-98
Date:
November 18, 1998

Legend

Company	=
State A	=
Holdings	=
Investments	=
Corp A	=
State B	=
Corp B	=
Contract	=
Mr. B	=
State D	=
State E	=

Area	=
Site	=
Mr. C	=
Inc	=
Resources	=
Financial	=
Engineering	=
Services	=
Corp P	=
Binder	=

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This is in response to your letter dated June 19, 1998, submitted on behalf of Company, by your authorized representatives requesting rulings concerning the application of the Internal Revenue Code to a transaction described below. The facts and representations are understood to be as follows.

The Company is a newly-formed limited liability company organized under the laws of State A that will elect to be treated as a partnership for federal income tax purposes. The Company will use the accrual method of accounting and will have a fiscal year-end of December. The initial members of the Company are Holdings, a State A limited liability company; Investments, a State A limited liability limited partnership; and Corp A, a State B corporation. Collectively, Holdings, Investments, and Corp A are referred to as the "Members." Holdings is the "tax matters partner" for the Company.

The Company was formed on March 9, 1998, for the purposes of (i) acquiring an interest in the Contract (described below), (ii) causing two synthetic fuel production facilities (Facilities) to be fabricated, assembled, installed, and placed into service pursuant to the Contract, and (iii) operating the Facilities using the Process (described below) so as to produce Briquettes and sell the Briquettes to unrelated persons.

Pursuant to the Company's operating agreement (the "LLC Operating Agreement"), Holdings owns a 99% membership interest in the Company; Investments, a 0.6667% ; and Corp A, a 0.3333%. The LLC Operating Agreement provides that non-liquidating distributions will be made in accordance with the Members' respective membership interests in the Company and that liquidating distributions will be made in accordance with the Members' respective positive capital account balances. All items of profit and loss will generally be allocated among the Members in accordance with their respective membership interests in the Company and items of income, gain, deduction, and loss of the Company for federal income tax purposes will generally be allocated among the Members in the same manner as the corresponding item of profit and loss of the Company is allocated for capital account purposes. All credits against federal income tax with respect to the Company's property or operations, including credits under § 29 of the Internal Revenue Code, will be allocated among the Members in accordance with their respective membership interests in the Company for the period during which the expenditure, production, sale, or other event giving rise to the credit occurs. Management of the Company will be vested in its manager, Holdings.

On December 30, 1996, Corp B, as "Buyer," and . and/or as "Seller," entered into an Equipment Construction and Purchase Agreement, for the construction, installation, and placing into service of five synthetic fuel production facilities (the "Corp B Facilities"). Also on December 30, 1996, Mr. B, an individual who is currently an indirect owner of Corp B, executed a Note and Guarantee of Personal Performance (the "Mr. B Guaranty"), pursuant to which he personally guaranteed Corp B's financial performance under the default and termination for convenience provisions (described below) of the Contract in an amount equal to $ per facility.

Each Corp B Facility is a movable facility designed to convert coal fines material (including waste coal from impoundments and run of mine coal) into 50 tons of Briquettes per hour.

Under the Contract, construction of the Corp B Facilities was to commence upon the written request of Buyer on or before February 1, 1998 (which request was timely made) and mechanical completion and start-up of the facilities was to be achieved no later than June 28, 1998. Upon completion of the Corp B Facilities, the Buyer is obligated to pay a maximum contract price of $ (the "Contract Price").

Pursuant to Article V of the Contract, a failure to obtain the required permits would terminate the Contract, in which event the Buyer would be obligated to pay all amounts incurred by and accrued to Seller under the Contract. In addition, the Buyer may terminate the Contract for cause, as defined in Article V. Upon a termination for cause, the Buyer may take possession of the facility and all materials, equipment, tools, and construction equipment and machinery, and complete construction by whatever reasonable method the Buyer deems expedient. If the Buyer terminates the Contract "for convenience" (defined in the Contract as termination for any reason other than a failure to obtain the required permits or for cause), the Buyer is required to pay Seller a termination fee equal to the greater of (i) 5 percent of the Contract Price or (ii) the total amount incurred by and accrued to Seller.

The Contract provides that the Corp B Facilities will be located (i) at two sites to be designated by Corp B within 100 miles of the southwest corner of State D and the southeast corner of State E ; (ii) at two sites along the southern border of State E; and (iii) at one site located within the coal mining area of State B. Article IV of the Contract further provides, however, that "Buyer may amend the sites prior to his notice to proceed to Seller." On January 30, 1998, Corp B delivered to Seller Notice of Site Designation and Notice to Proceed designating a single site near Area, as the site location for the Corp B Facilities and giving Seller notice to proceed with respect to the facilities.

As early as January 1998, Mr. C and representatives of Financial began negotiating with representatives of Corp B to acquire a direct or indirect interest in two or more of the Corp B Facilities. Mr. C and Financial caused, Inc, which is owned 66-2/3 percent by Resources (an S corporation owned 100 percent by Mr. C) and 33-1/3 percent by Financial, to make a loan and other advances (the "Inc Loan" and the "Inc Advances" respectively) to Corp B. Corp B's obligation with respect to the Inc Loan is evidenced by a demand promissory note dated February 13, 1998, in the original principal amount of $ (the "Inc - Corp B Note"). The proceeds of the Inc Loan and the Inc Advances have been paid on behalf of Corp B to Seller and its subcontractors or vendors under the Contract.

By letter agreement dated April 29, 1998 (the "Seller Consent"), Seller consented to an assignment of the Contract by Corp B to the Company with respect to two of the five Corp B Facilities (the "Facilities") and agreed that a portion of the Contract Price with respect to each of the Facilities may be paid in the form of two promissory notes. The combined principal amounts of the promissory notes, together with the sum of all cash progress payments made by Corp B and the Company to or on behalf of Seller under the Contract, will equal the Contract Price ($) for each Facility. Seller and the Company also agreed, via the Seller Consent, to designate the Site as the site location for the Facilities.

Effective May 15, 1998, Corp B assigned the Contract as it relates to the Facilities to the Company pursuant to a Partial Assignment of Equipment and Construction and Purchase Agreement (the "Corp B Assignment"). Pursuant to the

Corp B Assignment, the Company assumed liability for the Inc-Corp B Note and the Inc Advances. As additional consideration for the Corp B Assignment, the Members will cause to be paid to Corp B payments (the "Corp B Payments") measured by the consideration, if any, received by Holdings or its members as a result of any sale of membership interests in the Company to a third party, to the extent that such consideration is determined by reference to § 29 tax credits attributable to the production and sale of Briquettes from the Facilities. The amount of the Corp B Payments will equal 25 percent of such consideration, less aggregate amounts paid under the Second Note (described below).

A loan is expected between the Company and Inc (the "Inc-Company Loan") (i) to refinance the Inc Advances and the Inc-Corp B Note assumed by the Company as consideration for the Corp B Assignment and (ii) to provide the Company with additional funds to make the progress payments under the Contract. The Inc-Company Loan will be evidenced by a note (the "Inc-Company Note") in an original principal amount not to exceed $. The Inc-Company Note will be repaid in 108 equal installments of principal or interest beginning July 30, 1999.

Under the Seller Consent, the Company would deliver two promissory notes (the "Notes") representing the balance of the Contract Price. The first Note (the "First Note") will be in the original principal amount of $ and will be delivered directly to ., to satisfy Seller's obligation under the Contract to provide the briquetter technology license to be used in the operation of the Facilities. The second Note (the "Second Note") will be in the original principal amount of $ less (i) the principal amount of the First Note and (ii) the sum of all cash progress payments made by Corp B and the Company to or on behalf of Seller under the Contract. The Notes will be paid in 108 equal installments beginning July 30, 1999.

Although the Company expects to have operating funds sufficient to service the Inc-Company Note, and the Notes, it is anticipated that all amounts owed by the Company will be assumed by a third-party investor in connection with a purchase of the Company's membership interests.

At the time that negotiations began with respect to the assignment of the Facilities, Engineering was engaged to act as an on-site representative with respect to construction matters under the Contract. Engineering is not a "related person" as defined in § 29(d)(7) with respect to the Company or its affiliates; however, Engineering will be paid a performance bonus measured by the consideration, if any, received by Holdings or the Members as a result of any sale of membership interests in the Company to the extent that such consideration is determined by reference to § 29 tax credits attributable to the production and sale of Briquettes from the Facilities. The amount of this bonus will not exceed 2 percent of such consideration. Neither Engineering, nor the owner of Engineering, has any equity interest in the Company and neither party is entitled to any income arising from the operations of the Company.

Company represents that the Facilities were placed in service at the site on June 29, 1998.

In order to isolate certain environmental and other liabilities associated with the briquetting business, Services, a State A limited liability company, was formed to act as an operating and contracting entity for and on behalf of the Company**.**

The Company has engaged Services to provide operating and maintenance services to the Company, including operation, maintenance, and testing of the Facilities and record keeping, reporting, payroll, accounting, legal, and insurance services. Services will use its own employees or engage independent contractors to provide such services. For example, Services plans to engage Engineering, as an independent contractor, to perform certain consulting and oversight services.

The Company entered into a sublease of the Site from Services as allowed under the Facilities Site Sublease Agreement dated May 1, 1998, entered into between and Services.

The Company will enter into a coal fines supply agreement with Services to supply coal fines. Services, to assure a continuous supply of coal fines, has executed a Coal Fines Supply Agreement with Corp P, pursuant to which Corp P will extract, wash, prepare, and deliver coal fines of a certain quality to Services at the Facility Site. Services will purchase all of the coal fines required for operation of the Facilities from Corp P. Services will pay Corp P $ per month plus an amount equal to the sum of (i) all costs incurred by Corp P associated with extracting, washing, preparing, and delivering the coal fines to the Facility Site; and (ii) $1.00 per ton of coal fines for the first 10,000 tons of coal fines delivered to the Facility Site per month. Corp P, 50 percent owned by the owner of Engineering, is not a "related party" as defined by § 29(d)(7) with respect to the Company or Holdings.

In order to permit Corp P to acquire, assemble and install, in a timely manner, the equipment necessary to extract, wash, prepare, deliver, and weigh the coal fines to be used at the Facilities (the "<u>Beneficiation Equipment</u>"), Inc has provided Corp P with a line of credit up to $ The related promissory note, which is secured by the Beneficiation Equipment, will be paid in 120 equal installments beginning July 31, 1998.

The Company plans to enter into a binder supply agreement with Services to purchase a suitable quality and quantity of Binder, a proprietary binder developed by Services in cooperation with , and other suitable binders for use in the Process at the Facilities.

The Company and ., (collectively " _") both of which are corporations, are negotiating a binder product technology license agreement pursuant to which the Company will acquire the right to use, in connection with the production of Briquettes, the Binder and related technologies, and any bio-binder now or hereafter developed or acquired by or any of its affiliates.

The Company intends to market the Briquettes itself or to engage a third-party to sell the Briquettes on behalf of the Company to unrelated persons.

The Facilities are movable and designed to be moved from site to site depending upon the availability, price, and location of the coal feedstock used to produce Briquettes. The Process at the Facilities consists of: (i) mixing the coal feedstock with a petroleum-based, liquid binder system, (ii) feeding metered amounts of the coal fines and binder mixture into a roll briquetter, and (iii) compressing the mixture into Briquettes.

In the first phase of the Process, coal fines of a specified quality are mixed with a petroleum-based, liquid binder system. The binder system is comprised of a high-viscosity, liquid component and, optionally, one or more inorganic components that act as co-reactants to enhance binder performance. The high viscosity liquid component typically includes a heavy hydrocarbonaceous fraction from petroleum refining, such as vacuum-tower bottoms, that contains a significant quantity of hetero atoms, such as oxygen, nitrogen, or sulfur. The high-viscosity liquid component may also include additional additives for binder performance enhancement. The binder system is introduced into the Process at temperatures of up to 300°F. The Company has successfully tested two different binder systems in the Process, the binder system Services developed and the commercially available Binder system.

In the second phase of the Process, the mixture of coal fines and binder system is metered into a roll briquetter and subjected to pressures of up to 3,000 pounds per square inch ("psi"). The combination of the chemically reactive binder system, the mixing process, heat from the binder system, and pressure from the roll briquetter results in the formation of a high-density, solid synthetic fuel.

Numerous tests were conducted on Briquettes made from coal fines which may be used as a feedstock. Based on the preponderance of these tests, Company alleges that the Briquettes will differ significantly in chemical composition from the coal in the coal fines from which the Briquettes are produced. Other than the Binder material which will account for less than seven percent of the total Btu content of the Briquettes, the Btu content of the Briquettes is attributable to materials described in § 29(c)(1)(C).

Company represents that:

1. No grants have been provided by the United States, a state, or a political subdivision of a state for use in connection with any project within the meaning of § 29(b)(3)(A)(i)(I), including the Facilities.

2. No proceeds of any issue of a state or local government obligation has or will be used to provide financing for any project within the meaning of § 29(b)(3)(A)(i)(II), including the Facilities.

3. No subsidized energy financing, within the meaning of § 48(a)(4)(C), has been or will be provided in connection with any project within the meaning of § 29(b)(3)(A)(i)(III), including the Facilities.

4. No "energy credit" has been or will be allowed with respect to the Facilities within the meaning of § 29(b)(4).

5. For purposes of calculating the § 29 credit, the Btu content of the Briquettes produced and sold by the Company to unrelated persons will be determined without regard to the Btu content attributable to any material not described in § 29(c)(1)(C).

LAW AND ANALYSIS

Section 29(a) (originally designated as section 44D by the Crude Oil Windfall Profit Tax Act of 1980 ("COWPTA")) provides a credit against federal income tax for a taxable year in an amount equal to $3.00 (adjusted for inflation) multiplied by the barrel-of-oil equivalent of qualified fuels sold by the taxpayer to an unrelated person during the taxable year, the production of which is attributable to the taxpayer. Under section 29(d)(5), a barrel-of-oil equivalent is the amount of fuel that has a Btu content of 5.8 million; except that in the case of solid synthetic fuels from coal, the Btu content is to be determined without regard to any material other than coal.

Section 29(c)(1)(C) defines the term "qualified fuels" to include liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks.

Section 29(d)(7) provides that persons are treated as being related to each other if such persons would be treated as a single employer under the regulations prescribed under § 52(b). In the case of a corporation that is a member of an affiliated group of corporations filing a consolidated return, the corporation is treated as selling qualified fuels to an unrelated person if the fuels are sold to the unrelated person by another member of the affiliated group.

Sections 29(f)(1)(B) and 29(f)(2) provide that the § 29 credit applies to qualified fuels which are produced in a facility that was placed in service after December 31, 1979, and before January 1, 1993, and which are sold before January 1, 2003. Section 29(g)(1)(A) modifies § 29(f)(1)(B) to extend the § 29 credit for qualified fuels described in § 29(c)(1)(C) that are produced in facilities placed in service before July 1, 1998, pursuant to a binding written contract in effect before January 1, 1997. For qualified fuels produced in these facilities, § 29(g)(1)(B) modifies § 29(f)(2) to provide that the credit is available for fuels sold before January 1, 2008.

In the case of a property or facility in which more than one person has an interest, except to the extent provided in regulations prescribed by the Secretary, § 29(d)(3) provides that production from the property or facility (as the case may be) is allocated among such persons in proportion to their respective interests in the gross sales from the property or facility.

Under § 29(c)(1)(C), a solid fuel produced from coal must be a "synthetic fuel" in order to be a "qualifying fuel" for purposes of § 29. In Rev. Rul. 86-100, 1986-2 C.B. 3, the Internal Revenue Service ruled that the definition of the term "synthetic fuel" in § 48(l) and its regulations is relevant to the interpretation of the term in § 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; that is, 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).

Based on the representations of Company, including the preponderance of proffered data on the significant difference in the chemical composition of the fuel to be produced from that of the coal, the fuel produced from coal fines in Company's Facility using the Process will be a solid synthetic fuel from coal.

A contract is binding for purposes of § 29 only if it is enforceable under local law against the taxpayer and does not limit damages to a specified amount, for example, 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 not be treated as limiting damages.

The Contract executed prior to , includes such essential features as a description of the Facility, a completion date, and a price. It is represented that the contract is binding under applicable law and that the contract does not limit damages save and except for general laws of the applicable state relating to damages. Therefore, the Contract represents a binding written contract for purposes of § 29(g)(1).

To qualify for the § 29 credit, the Facility must be placed in service before July 1, 1998. Although § 29 does not define "placed in service," the term has been defined for purposes of the deduction for depreciation and the investment tax credit. For these purposes, property is placed in service in the taxable year that the property is placed in a condition or state of readiness and availability for a specifically assigned function. See §§ 1.46-3(d)(1)(ii) and 1.167(a)-11(e)(1)(i). "Placed in service" has been consistently construed as having the same meaning for depreciation and investment tax credit. See Rev. Rul. 76-256, 1976-2 C.B. 46.

The Facility is a mobile facility that can be moved from one coal fines source to another as necessary. If a relocation of the Facility subsequent to June 30, 1998, results in a new placed in service date for the Facility under § 29, then none of the production from the Facility after it is moved would qualify for the § 29 credit.

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 § 45 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. Revenue Ruling 94-31 holds that, for purposes of § 45, a facility qualifies as originally placed in service even though it contains some used property, provided that 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 of Rev. Rul. 94-31, the relocation of Company's Facility after June 30, 1998, (provided that it is originally placed in service before July 1, 1998) will not prevent the relocated Facility from continuing to be treated as originally placed in service prior to July 1, 1998, for purposes of § 29, provided that the fair market value of the used property that is incorporated into the relocated Facility exceeds percent of the total fair market value of the relocated Facility immediately following the relocation.

The Company will own the Facility that, using the Process, will produce the Briquettes. The Company, Services, or an unrelated third-party contractor will operate and maintain the Facility and the Company, Services, or an unrelated third-party marketing agent will market and sell the Briquettes to unrelated persons. The Company represents that the contractor and third-party marketing agent will not have any interest in the production of the Briquettes. Accordingly, production of Briquettes from the Facility will be attributable solely to the Company.

Other than the Binder material, which is attributable to less than seven percent of the total Btu content of the Briquettes, the Btu content of the Briquettes is attributable solely to materials described in § 29(c)(1)(C). In accordance with § 29(d)(5), the Btu content of the Briquettes must be calculated without regard to any Btu content attributable to the binder material.

Section 7701(a)(14) provides that the term "taxpayer" means any person subject to any internal revenue tax. Generally, under § 7701(a)(1), the term "person" includes an individual, 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) of the Income Tax Regulations provides that the distributive share is determined under § 704 and § 1.704-1.

Section 704(a) provides that a partner's distributive share of income, gain, loss, deduction, or credit is determined by the partnership agreement, except as otherwise provided in Chapter 1 of subtitle A of title 26. 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 for 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. Therefore, any allocations of tax credits or tax credit recapture cannot have economic effect under § 1.704-1(b)(2)(ii)(b)(1), and so must be allocated in accordance with the partners' interest in the partnership at the time the tax credit or credit recapture arises. If the expenditure that gives rise to a tax credit in a partnership taxable year also gives rise to valid allocations of partnership loss or deduction (or other downward capital account adjustments) for such year, then the partners' interests in the partnership for such credit (or the cost giving rise thereto) shall be in the same proportion as such partners' respective distributive shares of such loss or deduction (and adjustments). See § 1.704-1(b)(5), example (11). The same principles apply in determining the partners' interests in the partnership regarding tax credits that arise from receipts of the partnership (whether or not taxable). The credit provided by § 29 is based on receipts from the sale of qualified fuels. Therefore, any allocation of the credit in proportion to the allocation of the receipts from the sale of the qualified fuel will be respected if the allocation of the receipts satisfies the substantial economic effect safe harbor or the allocation is consistent with the partners' interest in the partnership.

An allocation of a partnership item that has a corresponding economic benefit or burden is a valid allocation under § 704(b) if the allocation satisfies either (1) the substantial economic effect safe harbor of § 1.704-1(b)(2), or (2) the partners' interest in the partnership standard of § 1.704-1(b)(3). To satisfy the substantiality component of the substantial economic effect safe harbor, the economic effect of the allocation must be substantial under § 1.704-1(b)(2)(iii).

Under the provisions of § 1.704-1(b)(2)(iii), an allocation is not substantial if (1) the after-tax economic consequences (including the effect of the § 29 credit) of at least one partner may, in present value terms, be enhanced compared to such consequences if the allocation (or allocations) were not contained in the partnership agreement, and (2) there is a strong likelihood that the after-tax consequences of no partner will, in present value terms, be substantially diminished compared to such consequences if the allocation (or allocations) were not contained in the partnership agreement. In determining the after-tax consequences that result from the allocation, the interaction of the allocation with the partner's tax attributes that are unrelated to the partnership is taken into account.

After applying the relevant law to the facts represented, we rule that the § 29 credit attributable to the Company may be allocated to the members of the Company in accordance with the members' interests in the Company when the credit arises. For the § 29 credit, a member's interest in the Company is determined based on a valid allocation of the receipts from the sale of the § 29 qualified fuel.

Section 708(b)(1)(B) of the Code provides that a partnership will be considered as terminated if within a twelve-month period there is a sale or exchange of 50 percent or more of the total interests in partnership capital and profits.

Section 1.708-1(b)(1)(iv) of the regulations 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)(1)(iv) applies to terminations of partnerships under § 708(b)(1)(B) that occur on or after May 9, 1997.

The § 29 credit has always been a time sensitive credit in that eligibility for the credit is determined when facilities or wells producing qualified fuels are placed in service and when the qualifying fuels are produced and sold to unrelated persons. For example, the § 44D credit, as originally enacted in the COWPTA, was generally available for the production and sale of alternative fuels after December 31, 1979, and before January 1, 2001, from facilities placed in service after December 31, 1979, and before January 1, 1990, on property which first began production after January 1, 1980.

The § 44D credit for qualifying processed wood was available only as to production and sales from facilities first placed in service in calendar years 1980 and 1981. As to production from those facilities, the credit was available for production and sales before either October 1, 1983, or three years from the date that the facility first was placed in service, whichever came later. The § 44D credit for steam from solid agricultural by products was available only for production and use before January 1, 1985, in facilities placed in service after December 31, 1979. In addition, there was a special rule for post-1979 increases in production capacity or replacement of facilities first placed in service before 1980. Such production capacity increases or replacements were treated as facilities first placed in service after 1979. See Conf. Rep. No. 817, 96th Cong., 2d Sess. 139-41 (1980), 1980-3 C.B. 299-301.

The § 29 credit has been extended by Congress four times. The placed-in-service deadline and the period for claiming the § 29 credit were extended in the Technical and Miscellaneous Revenue Act of 1988 (1991 for placed in service), the Omnibus Budget Reconciliation Act of 1990 (1993 for placed in service and 2003 for the end of the credit period), the Energy Policy Act of 1992 (1997 for placed in service and 2008 for the end of the credit period), and the Small Business Job Protection Act of 1996 (June 30, 1998, for placed in service).

If § 29(f)(1)(B) were read as requiring facilities producing qualified fuels to be placed in service by the taxpayer, facilities placed in service before 1980 that are sold or transferred to a new taxpayer after 1979 would entitle the purchaser/transferee to claim the § 29 credit. It is clear from the legislative history of § 44D that Congress intended the credit to apply to facilities placed in service after 1979, and that the placed-in-service deadline in § 29(f)(1)(B) must be read as applying to when the facility is first placed in service within the applicable dates. The placed-in-service deadlines contained in §§ 29(f) and 29(g) focus on the facility, and not the owner of the facility. The legislative history of § 44D clearly shows that Congress wanted to encourage the production of new alternative fuels from facilities first placed in service after 1979, and not provide tax incentive for production capacity in service before 1980.

Section 29(g)(2) demonstrates that Congress knows how to preclude transferees of facilities from claiming the § 29 credits. Section 29(g)(2) provides that 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.

The determination of whether a facility has satisfied the placed-in-service deadline under either § 29(f)(1)(B) or 29(g)(1)(A) is made by reference to when the facility is first placed in service, not when the facility is transferred or sold to a different taxpayer. Therefore, although a § 708(b)(1)(B) termination of the Company would result in a deemed transfer of assets to a new partnership, this technical termination of the partnership and formation of a new partnership would not affect the placed in service date of the facility for purposes of § 29.

RULINGS

Accordingly, based on the facts as represented and the foregoing discussion of law and analysis we conclude as follows:

1. The Briquettes produced by the Company in the Facilities using the Process are a solid synthetic fuel produced from coal that are a "qualified fuel" within the meaning of § 29(c)(1)(C).

2. The Contract, as assigned to the Company, constitutes a "binding written contract in effect before January 1, 1997" within the meaning of § 29(g)(1)(A).

3. Each Facility will be "placed in service" for purposes of § 29(g)(1) on the date that the facility is first in place at the Site in a condition or state of readiness and availability to produce Briquettes, as provided in sections 1.46-3(d)(1)(ii) and 1.167(a)-11(e)(1).

4. If a Facility is "placed in service" within the meaning of § 29(g)(1) prior to July 1, 1998, relocation of the facility after June 30, 1998, will not result in a new placed in service date for the facility for purposes of § 29 if the fair market value of the equipment from the initial facility that is incorporated into the relocated facility exceeds [redacted] percent of the total fair market value of the relocated facility immediately following the relocation.

5. Production of Briquettes from each Facility will be attributable solely to the Company, entitling the Company to the § 29 credit for the Briquettes sold to unrelated persons.

6. The amount of the § 29 credit for Briquettes produced by the Company and sold to unrelated persons must be calculated based on the Btu content of the Briquettes without regard to any Btu content attributable to the binder material or any other material not described in § 29(c)(1)(C).

7. The § 29 credit attributable to the Company may be passed through to and allocated among the Company's members in accordance with such members' interests in the Company at the time the § 29 credit arises. For the § 29 credit, a member's interest in the Company is determined based on a valid allocation of the receipts from the sale of the qualified fuel.

8. A termination of the Company under § 708(b)(1)(B) will not preclude the reconstituted partnership from claiming the § 29 credit for the production and sale of Briquettes to unrelated persons.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. In accordance with a power of attorney filed with the request for rulings, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

HAROLD E. BURGHART
Assistant to the Chief
Branch 6
Office of the Assistant Chief
Counsel(Passthroughs and
Special Industries)