



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR

FROM: Joseph H. Makurath, Acting Branch Chief (CC:PSI:7)
SUBJECT: No Rule on Request for Private Letter Ruling

P =

W =

X =

Y =

Location 1 =

Location 2 =

Process =

Date 1 =

Date 2 =

Date 3 =

\$X =

On _____, we issued a no rule letter to P. P had requested rulings under section 29 of the Internal Revenue Code.

The facts as represented by P are as follows:

P is a limited liability company classified as a partnership for federal income tax purposes. P is indirectly owned by W.

In _____, X placed in service _____ units, related piping and controls, and a _____ using the patented Process. The facility was placed in service in Location 1 on land owned by Y. The purpose of the Process was to clean coal for Y.

On Date 1, P purchased _____ of the _____ units. Also on Date 1, P purchased from a second party various components of a functioning conventional coal preparation plant that had been placed in service in _____. On Date 2, P purchased from a third party a dryer, screen, boiler, pump, scrubber, steel storage tanks, and other related coal processing equipment that had been placed in service in _____. In Date 3, P assembled these components in Location 2 as a facility for producing what P represents is a solid synthetic fuel from coal. P estimates that it will claim \$X in section 29 credits in 2001.

Section 29(f) provides that section 29 applies to qualified fuels that are produced in a facility placed in service after December 31, 1979, and before January 1, 1993, and that are sold before January 1, 2003. Section 29(g)(1)(A) provides that a facility for producing qualified fuels described in section 29(c)(1)(C) is treated for this purpose as being 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. For a facility that meets this condition and is originally placed in service after December 31, 1992, section 29(g)(1)(B) provides that the section 29 credit applies to qualified fuels that are sold before January 1, 2008.

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. See, for example, section 1.167(a)-11(e)(1)(i) of the Income Tax Regulations. Thus, the section 29 credit is not allowed for fuel produced in a facility that was originally placed in service for a function other than producing qualified fuel under section 29(c)(1)(C) and was not converted into a facility for producing qualified fuel until after June 30, 1998. Rev. Proc. 2001-30, 2001-19 I.R.B. 1163, as modified by Rev. Proc. 2001-34, 2001-22 I.R.B. ____.

Rev. Proc. 2001-30, as modified by Rev. Proc. 2001-34, states that the Service interprets section 29(f) and (g) to allow the section 29 credit for qualified fuel produced in a facility after its modification only if the modification was placed in service before July 1, 1998, or does not significantly increase the production capacity of the facility or significantly extend the life of the facility. For example, a facility (including one of multiple facilities located at the same site) may be relocated without affecting the availability of the credit if all essential components of the facility are retained and the production capacity of the relocated facility is not significantly increased at the new location. If, however, the essential components of a single facility are combined after June 30, 1998, with other components that were not part of the facility on June 30, 1998, to create multiple facilities or significantly increase production capacity, the credit will not be allowed for fuel produced at any of those facilities.

The facts of P's ruling request presented the following problems regarding the placed in service requirement of section 29(f) and (g):

1. The units using the Process were originally placed in service for the specifically assigned function of cleaning coal and not for producing a solid synthetic fuel from coal within the meaning of section 29(c)(1)(C);
2. The other equipment purchased by P was originally placed in service for the specifically assigned function of coal preparation and handling and not for producing a solid synthetic fuel from coal within the meaning of section 29(c)(1)(C);
3. P's facility was not assembled and operational until Date 3, more than two years after the required placed in service date of July 1, 1998; and
4. The units purchased by P were originally part of a unit plant. These essential components of a single facility were combined after June 30, 1998, with other components that were not part of the facility on June 30, 1998. If the same occurs with the remaining units, then multiple facilities would be created from a single facility and the credit would not be allowed for fuel produced at any of the facilities.

Because of these problems, we do not believe that P is entitled to any section 29 credits.

Joseph H. Makurath
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(Passthroughs and Special Industries)