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Date:
July 01, 2004

LEGEND:

A =

Buyer =

Ruling 1 =
Ruling 2 =
B =

C =

D =

E =

F =
G =
H =

I =
J =
K =

T =
U =
V =
W =
X =
Y =
Z =
Date 1 =

Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Date 9	=
Date 10	=
Date 11	=
M	=
N	=
O	=
P	=
Q	=
R	=
Site X	=
Site Y	=
d	=
e	=
b	=

Dear :

This letter responds to a letter, dated May 4, 2004, submitted on behalf of A by its authorized representative, requesting rulings under § 29 and § 702 of the Internal Revenue Code.

The facts as represented are as follows:

A received Ruling 1 on Date 1, which ruled on the issues addressed by this letter. A seeks a confirmation of the rulings in light of the purchase of an interest in D by Buyer.

A is a Delaware limited liability company that is classified as a disregarded entity for federal tax purposes. A owns a facility (Facility) for the production of solid synthetic fuel from coal. B is a Delaware limited liability company and owns all of the membership interest in A. B is classified as a disregarded entity for federal income tax purposes. C is a Delaware limited partnership and owns all of the membership interest in B. Because B is treated as disregarded entity for federal tax purposes, C is treated as owning B's membership interest in A. Because A is treated as a disregarded entity for federal tax purposes, C is treated as owning all of the assets of A.

D, a Delaware limited liability company, owns a d% limited partnership interest in C. E, a Delaware corporation, owns a e% general partnership interest in C. On Date 11, Buyer entered into an agreement to purchase a b% interest in D, a partner in C, from K.

The purchase agreement obligates Buyer to make certain fixed and contingent payments to K. A has provided evidence that the net present value of the fixed payments exceed fifty percent of the total purchase price.

The Facility was built pursuant to a construction contract entered into on Date 2 between X (as buyer) and Y and/or Z (as seller). On Date 3, the construction contract was assigned from X to T and from T to V. On Date 4, the construction contract was assigned from V to U. On Date 5, the construction contract was assigned from U to W.

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.

On Date 6, U received Ruling 2, which ruled that the construction contract "constitutes a 'binding written contract' within the meaning of section 29(g)(1)(A)."

On Date 7, H acquired the Facility from W. Thereafter, H contributed the Facility to A. The Facility was constructed at Site X. A represents that the Facility was in a condition or state of readiness and availability for its specifically assigned function and was operational before July 1, 1998.

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 8, A relocated the Facility from Site X to a new location at Site Y. This relocation occurred because of A's inability to obtain sufficient coal feedstock at Site X and a lack of demand for synthetic fuel in the region of 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, all essential components of the Facility are retained at Site Y and the production capacity of the Facility has not significantly increased at Site Y.

A entered into a Facility Operating Agreement with F (an unrelated party) for the operation and maintenance of the Facility. Under this agreement, F will provide services to A in connection with the relocation, operation and accounting for the Facility. F is reimbursed for specified costs in connection with the start-up of the Facility, and up to $M of its costs in relocating the Facility, in each case with interest, but is required to bear a portion of the costs of upgrading Site Y to accommodate the Facility. For its other services, F is paid a fee of $N for each ton of synthetic fuel sold, subject to certain inflation adjustments. F is required to fund certain operational expenses of the Facility, and is reimbursed for such expenses with interest, except that F is responsible for expenses that exceed budgeted costs in certain circumstances.

Pursuant to an Exclusive Coal Feedstock Supply Agreement entered into as of Date 9 between A and F, A is required to purchase the coal feedstock for the Facility from F. During the initial 12 months of operation of the Facility, F agrees that the price of certain

minimum quantities of the coal feedstock will not exceed by more than O the sales price of the synthetic fuel produced by the Facility. Following the initial 12 months of operation, F will sell coal feedstock to A at a price that is determined by reference to the market price plus a supply fee of P per ton of coal feedstock supplied which, upon renewal of the agreement, is subject to adjustment for inflation. F is entitled to a bonus procurement fee as an incentive to purchase coal feedstock at the least possible cost. Under the agreement, F agrees to procure coal feedstock that will result in the production of qualified fuel and that meets minimum quality standards and to test the coal feedstock to determine whether these standards are satisfied.

Pursuant to the Amended and Restated Binder Supply Agreement, dated Date 9, between A and I, A purchases chemical change agent from I for use at the Facility. A will pay $R per ton of synthetic fuel produced and sold by the Facility for the chemical change agent provided by I. This purchase price is subject to an annual inflation adjustment, and adjustments for a change in the application rate above or below a target rate or in the cost of certain components. I has initially entered into a Chemical Change Agent Supply Agreement with J, an affiliate of F, for J to act as the exclusive supplier to I of the chemical change agent to be sold to A.

A also entered into an Exclusive Agreement for Marketing of Synfuel Product with F. Under this agreement, A appoints F as the exclusive agent for the marketing of synthetic fuel produced by the Facility. The agreement authorizes F to enter into contracts on behalf of A to sell synthetic fuel produced by the Facility. Under this agreement, F agrees to remit to A all amounts received from the sale of the synthetic fuel less: (a) a barge transloading fee of $Q per ton; (b) a brokerage fee of $P per ton; and (c) transportation fees paid to third parties. Upon extension of this agreement, the marketing fee is subject to adjustment for inflation. All sales of synthetic fuel produced by the Facility will be to unrelated persons.

Pursuant to the Amended and Restated Contract Management Agreement, dated as of Date 10, between A and G (an unrelated party), G will manage the operation of the Facility on behalf of A. Under this agreement, G will monitor the performance of F, propose and monitor F's compliance with the annual budget, perform certain of A's obligations, and otherwise enforce the rights of A under certain contracts, including A's right to terminate those contracts in the event of specified cost overruns by F under the Operating Agreement. G may propose changes to the type and percentage of binder used by the Facility, and is responsible for determining that the operation of the Facility will comply with specified guidelines. In consideration for the performance of its services, G will receive a management fee equal to Q per ton of Qualified Fuel (as specially defined under the management agreement) produced by the Facility.

A has supplied a detailed description of the process employed at the Facility. A also has proposed that, from time to time, one of three alternative chemical reagents may be used in the process for the production of synthetic fuel. As described, the Facility and

the process implemented in the Facility, including the chemical reagents, meet the requirements of Rev. Proc. 2001-34, 2001-22 I.R.B. 1293.

A recognized expert in coal combustion chemistry has performed numerous tests on the coal used at the Facility and the synthetic fuel produced at the Facility and has submitted reports in which the expert concludes that significant chemical changes take place with the application of the process to the coal, including the alternative chemical reagents. A, with use of the 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.

C allocates receipts from the sale of synthetic fuel among its partners in accordance with the partnership interests of D and E as set forth in C's partnership agreement.

The rulings issued in Ruling 1, which you wish to be reconfirmed in this private letter ruling are as follows:

1. The Synthetic Fuel produced by the Facility using any of the described reagents 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 § 29(c)(1)(C).
2. The Construction contract constitutes a binding written contract in effect before January 1, 1997 within the meaning of § 29(g)(1)(A).
3. The Facility is "placed in service" for purposes of § 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 § 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 C within the meaning of § 29(a)(2)(B), and C will be allowed the credit as determined under § 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 § 29(g)(1) prior to July 1, 1998, relocation of the Facility after June 30, 1998 or replacement of parts after that date will not result in a new placed in service date for the Facility for purposes of § 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. The relocation of the Facility and the replacement of parts as described in the ruling request 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.
6. Any § 29 credit allowed to C may be passed through to and allocated among the partners of C under the principles of § 702(a)(7) in accordance with the partners' interest in C at the time the § 29 credits are allowed. For

purposes of the § 29 credit, a partner's interest in C is determined based on a valid allocation of the receipts from the sale of the § 29 credit synthetic fuel. Similarly, any § 29 credits allowed to D may be passed through to and allocated among the partners of D under the principles of § 702(a)(7) in accordance with the partners' interest in D at the time the § 29 credits are allowed. For purposes of the § 29 credit, a partner's interest in D is determined based on a valid allocation of the receipts from the sale of the § 29 credit synthetic fuel.

7. Provided the Facility was "placed in service" within the meaning of § 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 within the meaning of § 708(b).
8. B's purchase of the Facility and subsequent contribution to A will not affect the date that the Facility was placed in service for purposes of § 29. Further, the purchase of an indirect interest in the facility by Buyer will not affect the date that the Facility was placed-in-service for purposes of § 29. Therefore, C will be allowed the § 29 credit for synthetic fuel produced by the Facility and sold to unrelated persons before January 1, 2008.

RULING REQUESTS #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 Internal Revenue Service ruled that the definition of the term "synthetic fuel" under § 48(l) and its regulations are relevant to the interpretation of the term under § 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, namely 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).

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 as evidence 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 the expert test results submitted by A, we conclude that the synthetic fuel produced at the Facility using the described process and specified chemical reagents is a solid synthetic fuel produced from coal constituting a "qualified fuel" within the meaning of § 29(c)(1)(C). Because A, disregarded as an entity separate from B, will own the facility and operate and maintain the facility through its agent, and because B is disregarded as an entity separate from C, we conclude that C will be entitled to the § 29 credit for the production of the 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 § 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 § 29(f) in the case of a facility producing qualified fuels described in § 29(c)(1)(C). Section 29(g)(1)(A) provides that for purposes of § 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, § 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, includes such features as a description of the facility to be constructed, a completion date, and a maximum price. The contract also provides that damages shall not be less than six percent of the total contract price. A provided an opinion of counsel that the contract is binding under applicable law. Therefore, the contract is a binding written contract for purposes of § 29(g)(1).

RULING REQUEST #3 and #5

Sections 29(f)(1)(B) and (f)(2) of the Code provide that § 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) of the Code modifies § 29(f) in the case of a facility producing qualified fuels described in § 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 § 29(f)(1)(B), such a facility is to 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, § 29(f)(2) is to be applied by substituting for the date therein January 1, 2008.

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 § 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 § 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 § 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 § 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 § 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 § 168 of the Code), and other administrative assets.

Sampling and quality control are necessary for operational control of a production facility. However, a particular type of sampling equipment generally is not necessary for

the production of qualified fuel. Thus, the costs of sampling equipment are excluded from the Facility's total fair market value unless the particular sampling equipment is necessary for operational control of the facility.

RULING REQUEST #6

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 § 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 § 704 and § 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 § 38 property) are not reflected by adjustments to the partners' capital accounts. Thus, these allocations cannot have economic effect under § 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 § 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 § 29 credit attributable to C may be allocated to the partners of C in accordance with the partners' interests in C when the credit arises. For the allocation of the § 29 credit, a partner's interest in C is determined based on a valid allocation of the receipts from the sale of the § 29 qualified fuel. Similarly, any § 29 credits allocable to D, as a partner in C, may be allocated to the partners of D in accordance with the partners' interests in D when the credit arises. For the allocation of the § 29 credit, a partner's interest in C is determined based on a valid allocation of the receipts from the underlying sale of the § 29 qualified fuel.

RULING REQUEST #7

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 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 § 29 credit 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), 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 § 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 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 § 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 § 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 § 708(b)(1)(B) occurring on or after May 9, 1997.

As discussed above, the placed-in-service deadline in § 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 § 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 § 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 § 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 § 29 for the new owner. Further, a termination of C under § 708(b)(1)(B) will not preclude the reconstituted partnership from claiming the § 29 credit for the production and sale of synthetic fuel to unrelated persons.

RULING REQUEST #8

As discussed above, the placed-in-service deadline in § 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 § 29(f)(1)(B) and § 29(g)(1)(A) focus on the facility, and not the taxpayer owning the facility.

Accordingly, the determination of whether a facility has satisfied the placed-in-service deadline under § 29(f)(1)(B) and § 29(g)(1)(A) is made by reference to when the facility is first placed in service, not when the facility is placed in service by a transferee taxpayer. Therefore, we conclude that B's purchase of the Facility and subsequent contribution to A will not affect the date that the Facility was placed in service for purposes of § 29. Further, the purchase of an indirect interest in the Facility by Buyer will not affect the date that the Facility was placed-in-service for purposes of § 29. Provided the Facility was "placed in service" prior to July 1, 1998 within the meaning of

§ 29(g)(1), C will be allowed the section 29 credit for synthetic fuel produced by the Facility and sold to unrelated persons prior to January 1, 2008.

CONCLUSIONS

Accordingly, we conclude as follows:

1. The Synthetic Fuel produced by the Facility using any of the described reagents 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 § 29(c)(1)(C).
2. The Construction contract constitutes a binding written contract in effect before January 1, 1997 within the meaning of § 29(g)(1)(A).
3. The Facility is "placed in service" for purposes of § 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 § 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 C within the meaning of § 29(a)(2)(B), and C will be allowed the credit as determined under § 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 § 29(g)(1) prior to July 1, 1998, relocation of the Facility after June 30, 1998 or replacement of parts after that date will not result in a new placed in service date for the Facility for purposes of § 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. The relocation of the Facility and the replacement of parts as described in the ruling request 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.
6. Any § 29 credit allowed to C may be passed through to and allocated among the partners of C under the principles of § 702(a)(7) in accordance with the partners' interest in C at the time the § 29 credits are allowed. For purposes of the § 29 credit, a partner's interest in C is determined based on a valid allocation of the receipts from the sale of the § 29 credit synthetic fuel. Similarly, any § 29 credits allowed to D may be passed through to and allocated among the partners of D under the principles of § 702(a)(7) in accordance with the partners’ interest in D at the time the § 29 credits are allowed. For purposes of the § 29 credit, a partner's interest in D is determined based on a valid allocation of the receipts from the sale of the § 29 credit synthetic fuel.
7. Provided the Facility was "placed in service" within the meaning of § 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 within the meaning of § 708(b).

8. B's purchase of the Facility and subsequent contribution to A will not affect the date that the Facility was placed in service for purposes of § 29. Further, the purchase of an indirect interest in the facility by Buyer will not affect the date that the Facility was placed-in-service for purposes of § 29. Therefore, C will be allowed the § 29 credit for synthetic fuel produced by the Facility and sold to unrelated persons before January 1, 2008.

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 that is the subject of this letter, (ii) obtain regular reports from independent laboratories that have analyzed the fuel produced in such facility 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 taxpayer obtains 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. 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.

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

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

cc: