Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.
(Also Part I, § 29.)

Rev. Proc. 2001-30

SECTION 1. PURPOSE

This revenue procedure informs the public of the Internal Revenue Service's decision to issue private letter rulings regarding whether a solid fuel produced from coal is a qualified fuel under § 29(c)(1)(C) of the Internal Revenue Code under the circumstances described in section 3 of this revenue procedure.

SECTION 2. BACKGROUND

Section 2.01 of Rev. Proc. 2001-3, 2001-1 I.R.B. 111, provides that whenever appropriate in the interest of sound tax administration, it is the policy of the Service to answer inquiries of individuals and organizations regarding their status for tax purposes and the tax effects of their acts or transactions, prior to the filing of returns or reports that are required by the revenue laws. There are, however, certain areas in which, because of the inherently factual nature of the

problems involved, or for other reasons, the Service will not issue rulings or determinations letters.

Section 4 of Rev. Proc. 2001-3 sets forth those areas in which rulings or determination letters will not ordinarily be issued. "Not ordinarily" means that unique and compelling reasons must be demonstrated to justify the issuance of a ruling or determination letter. Section 2.01 of Rev. Proc. 2001-3.

Section 4.02(1) of Rev. Proc. 2001-3 provides that the Service will not ordinarily issue rulings or determination letters regarding any matter in which the determination requested is primarily one of fact, for example, market value of property, or whether an interest in a corporation is to be treated as stock or indebtedness.

Section 5 of Rev. Proc. 2001-3 sets forth those areas under extensive study in which rulings or determination letters will not be issued until the Service resolves the issue through publication of a revenue ruling, revenue procedure, regulations, or otherwise.

Section 5.01 of Rev. Proc. 2001-3 provides that the Service will not issue rulings or determination letters on whether a solid fuel other than coke or a fuel produced from waste coal is a qualified fuel under § 29(c)(1)(C). Waste coal for this purpose is limited to waste coal fines from normal mining and crushing operations and does not include fines produced (for example, by crushing run-of-mine coal) for the purpose of claiming the credit.

Section 5.01 of Rev. Proc. 2001-3 supersedes Rev. Proc. 2000-47, 2000-46 I.R.B. 482. Rev. Proc. 2000-47 was published because concern had been raised that taxpayers were claiming the § 29 credit for processing coal in ways that may not have been intended by the Congress. Rev. Proc. 2000-47 requested comments concerning the standard to be applied in determining

whether fuel produced from coal is a solid synthetic fuel. The Service received extensive comments.

Section 29 provides a credit against income tax for the production and sale of "qualified fuels" produced from a nonconventional source. Section 29(c)(1)(C) provides that qualified fuels include liquid, gaseous, or solid synthetic fuels produced from coal (including lignite).

Rev. Rul. 86-100, 1986-2 C.B. 3, adopts for purposes of § 29(c)(1)(C) the definition of synthetic fuel in § 1.48-9(c)(5) of the Income Tax Regulations. Section 1.48-9(c)(5)(ii) provides that, to be "synthetic," a fuel must differ significantly in chemical composition, as opposed to physical composition, from the substance used to produce it. Rev. Rul. 86-100 describes favorably processes such as gasification, liquefaction, and production of solvent refined coal that result in substantial chemical changes to the entire coal feedstock rather than changes that affect only the surface of the coal.

Section 29(f) provides that § 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 § 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, § 29(g)(1)(B) provides that the § 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, § 1.167(a)-11(e)(1)(i). Thus, the § 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 § 29(c)(1)(C) and was not converted into a facility for producing qualified fuel until after June 30, 1998.

The Service interprets § 29(f) and (g) to allow the § 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.

After reviewing the comments received in response to Rev. Proc. 2000-47 and reconsidering its interpretation of § 29(c)(1)(C), the Service has decided that the significant chemical change standard of Rev. Rul. 86-100 is the correct standard. The Service has also decided to resume the issuance of rulings under § 29(c)(1)(C), but only in the circumstances described below.

The Service is willing to issue rulings that do not go beyond the processes approved in the rulings issued prior to 2000. One procedure common to all of those processes (other than processes for the production of coke and similar products) is the use of elevated temperature and pressure to produce briquettes, pellets, or an extruded fuel product. The Service is also willing to rule with respect to a process that omits this procedure if the process is otherwise consistent with a process approved in a pre-2000 ruling and the omission of the procedure will not significantly

increase the production output of the facility. Accordingly, the Service will issue rulings regarding whether a solid fuel (other than coke) is a qualified fuel under § 29(c)(1)(C) under the circumstances described in section 3 of this revenue procedure.

SECTION 3. PROCEDURE

The Service will issue rulings that a solid fuel (other than coke) produced from coal is a qualified fuel under § 29(c)(1)(C) if the conditions set forth below are satisfied and evidence is presented that all, or substantially all, of the coal used as feedstock undergoes a significant chemical change. The conditions are that:

1. The feedstock coal consists entirely of coal fines or crushed coal comprised of particles no larger than 1/8 inch;

2. The feedstock coal is thoroughly mixed in a mixer: (a) with styrene or other monomers following an acid bath, (b) with quinoline (C_9H_7N) or other organic resin and left to cure for several days, (c) with ultra heavy hydrocarbons, or (d) with an aluminum and/or magnesium silicate binder following heating to a minimum temperature of 500 degrees Fahrenheit; and

3. The treated feedstock is subjected to elevated temperature and pressure that results in briquettes, pellets, or an extruded fuel product, or the taxpayer represents that the omission of this procedure will not significantly increase the production output of the facility over the remainder of the period during which the § 29 credit is allowable.

SECTION 4. EFFECTIVE DATE

This revenue procedure applies to all ruling requests, including any pending in the national office and any submitted after the date of publication of this revenue procedure.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Section 5.01 of Rev. Proc. 2001-3 is revoked.

DRAFTING INFORMATION

The principal author of this revenue procedure is David McDonnell of the Office of Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from the IRS and Treasury participated in its development. For further information regarding this revenue procedure contact Mr. McDonnell on (202) 622-3120 (not a toll-free call).