

**Internal Revenue Service**

**Department of the Treasury**

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Refer Reply To:  
CC:PSI:5 - PLR-138756-01  
Date:  
11/08/01

LEGEND:

Taxpayer =  
Corp 1 =  
State 1 =  
State 2 =  
Project =  
State 2 Statute =  
b =  
c =  
d =

Dear

This letter responds to Taxpayer's letter dated June 22, 2001, and subsequent correspondence, requesting a private letter ruling concerning the renewable electricity production credit under § 45 of the Internal Revenue Code.

The facts as represented in Taxpayer's submission are set forth below.

Taxpayer, a limited liability company organized in State 1, is wholly owned by Corp 1, a State 1 Subchapter C corporation. Taxpayer was formed to own and operate a wind energy facility (the "Project") in State 2. Taxpayer is a disregarded entity whose tax information will be included in the Corp 1 consolidated return.

The Project will consist of d b-kilowatt wind turbine generators that will generate c MW of electricity, which will be sold to a public utility under a power purchase agreement. For purposes of this ruling, it is assumed that the Project meets the requirements under § 45 that electricity production is from a qualified resource at a qualified facility, and is sold to an unrelated party.

The State 2 Statute

Taxpayer requests a ruling that the

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will not be considered 1) a grant provided by the United States, a State, or a political subdivision of a State for use in connection with the Project; 2) proceeds of an issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under § 103; 3) subsidized energy financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the Project; or 4) other credit within the meaning of § 45(b)(3)(A)(1)(iv).

Under § 45, the renewable electricity production credit for any taxable year is an amount equal to the product of 1.5 cents, multiplied by the kilowatt hours of electricity 1) produced by the taxpayer from qualified energy resources, and at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service, and 2) sold by the taxpayer to an unrelated person during the taxable year.

Under § 45(b)(3), the amount of the credit with respect to any project for any taxable year is reduced by an amount equal to the product of 1) the amount of the credit otherwise allowable for such year and 2) a fraction, the numerator of which is the sum of i) grants provided by the United States, a State, or a political subdivision of a State for use in connection with the project; ii) proceeds of an issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under § 103; iii) the aggregate amount of subsidized energy financing provided (directly or indirectly) under a Federal, State, or local program in connection with the project; and iv) the amount of any other credit allowable with respect to any property which is part of the project, and the denominator of which is the aggregate amount of additions to the capital account for the project for the taxable year and all prior taxable years.

A similar reduction exists under § 29(b)(3) relating to governmental grants or subsidized energy financing provided in connection with a nonconventional source fuel project. Section 29 was added to the Code as a part of the Crude Oil Windfall Profit Tax of 1980, section 231, 1980-3 C.B. 1, 40. The Conference Report, in explaining the reduction mechanism found in § 29(b)(3), states that the § 29 credit is reduced in proportion to federal grants provided in connection with the construction or acquisition of the facility. H.R. Rep. No. 96-817 (Conf. Rep.), 96th Cong., 2d Sess. (1980), 1980-3 C.B. 245, 300.

Section 45(c)(1) defines “qualified energy resources” to include wind. Section 45(c)(3)(A) defines a “qualified facility” in the case of a facility using wind to produce electricity as any facility owned by the taxpayer that is originally placed in service after December 31, 1993, and before January 1, 2002.

Section 45 does not define the term “grant.” However, the term is defined in § 1.148-6(d)(4)(iii) of the Income Tax regulations (involving arbitrage bonds) as a transfer for a governmental purpose of money or property to a transferee that is not a

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related party to or an agent of the transferor. The transfer must not impose any obligation or condition to directly or indirectly repay any amount to the transferor.

Section 45(b)(3)(A)(ii) provides that for purposes of § 45, tax-exempt bonds consist of an issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under § 103. The proceeds of such reduce the amount of credit for any taxable year.

Section 45 does not define subsidized energy financing. However, under § 48(a)(4)(C), the term means financing provided under a Federal, State, or local program a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.

Based solely on the representations and the relevant law and regulations set forth above, we conclude that the

(pursuant to the State 2 Statute), will not be considered 1) a grant provided by the United States, a State, or a political subdivision of a State for use in connection with the Project; 2) proceeds of an issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under § 103; 3) subsidized energy financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the Project; or 4) other credit within the meaning of § 45(b)(3)(A)(1)(iv).

Except as specifically set forth above, no opinion is expressed concerning the federal income tax consequences of the above described facts under any other provision of the Code or regulations. 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.

Sincerely yours,  
HAROLD E. BURGHART  
Assistant to the Chief, Branch 5  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures:

Copy of letter  
Copy for 6110(k)(3) purposes