

Rev. Proc. 2004-27

SECTION 1. PURPOSE

This revenue procedure permits certain owners of royalty interests (RI Owners) to claim the credit for producing fuel from a

nonconventional source under § 29 of the Internal Revenue Code in the taxable year (including a 2003 taxable year) in which they receive the income from the sale of qualified fuel, rather than in a prior taxable year in which the owner of the operating interest (OI Owner) sold the qualified fuel.

SECTION 2. BACKGROUND

.01 Section 29 provides a credit for producing fuel from a nonconventional source. Section 29(a) provides, in part, that there shall be allowed as a credit against the tax imposed by Chapter 1 for the taxable year an amount equal to (1) \$3, multiplied by (2) the barrel-of-oil equivalent of qualified fuels, the production of which is attributable to the taxpayer, that are sold by the taxpayer to an unrelated person during the taxable year.

.02 Section 29(c)(1) provides that the term “qualified fuels” means (A) oil produced from shale and tar sands, (B) gas produced from (i) geopressured brine, Devonian shale, coal seams, or a tight formation, or (ii) biomass, and (C) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks.

.03 Section 29(f) provides that the credit provided in § 29 applies only to qualified fuels produced from a well drilled, or in a facility placed in service, after December 31, 1979, and before January 1, 1993, and only to fuels sold before January 1, 2003.

.04 Section 29(g) extends the period for which the credit is applicable for certain facilities producing (1) gas from biomass or (2) liquid, gaseous, or solid synthetic fuels from coal (including lignite).

.05 The credit under § 29 does not arise as a result of an expenditure, and the availability of the credit does not depend on a recognition of the corresponding income. Rather, the credit arises as a result of a sale of the qualified fuel “during the taxable year.” Section 29(a). Therefore, a taxpayer is entitled to the credit under § 29 in the taxable year in which the qualified fuel is sold.

.06 Typically, an RI Owner must rely upon the statement provided by the OI Owner regarding the quantity of qualified fuel that the OI Owner sold on behalf of the RI Owner’s interest. An RI Owner generally receives its share of the income one or

more months after the OI Owner sells the qualified fuel. For instance, an RI Owner usually does not receive income from the sale of qualified fuel occurring in the last quarter of Year 1 until the first quarter of Year 2. It has come to the Service’s attention that many RI Owners have been claiming the credit under § 29 in the taxable year in which they receive the income from the sale of qualified fuel, rather than in the prior year of the sale. Many of these RI Owners are concerned that they will be unable to claim the § 29 credit on their federal income tax returns for 2003 with respect to income they received in that taxable year for sales of qualified fuel occurring prior to January 1, 2003. Although the proper taxable year to claim the credit under § 29(a) is the taxable year in which the OI Owner sells the fuel, in order to promote consistency and as a matter of administrative convenience, the Service will allow RI Owners within the scope of this revenue procedure to claim an otherwise allowable § 29 credit with respect to a sale of qualified fuel in the taxable year (including a 2003 taxable year) in which they receive the income from the sale of qualified fuel, subject to the provisions of section 4 of this revenue procedure.

SECTION 3. SCOPE

.01 This revenue procedure applies to an RI Owner that:

(1) is eligible to claim an otherwise allowable credit under § 29 in respect of sales of qualified fuel; and

(2) has, in all prior taxable years in which the RI Owner claimed the § 29 credit, consistently followed a practice of claiming the credit under § 29 with respect to a sale of qualified fuel in the taxable year in which the RI Owner received the income from the sale.

.02 For purposes of this revenue procedure, the term “RI Owner” includes the unitholders of trusts that own royalty interests where such unitholders are the grantors of the trust.

SECTION 4. PROCEDURE

An RI Owner within the scope of this revenue procedure may claim an otherwise allowable credit under § 29 with respect to a sale of qualified fuel in the taxable year (including a 2003 taxable year) in which

the RI Owner receives the income from a sale.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending after December 31, 1979.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Jaime C. Park of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure,

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