

Private Letter Ruling 8428035, 4/06/1984, IRC Sec(s). 44D

Apr. 06, 1984

In your letter of . . . submitted on behalf of the Partnership by your Representative, you ask for a ruling concerning the credit for producing fuel from a nonconventional source (section 44D of the Internal Revenue Code of 1954).

Specifically a ruling is requested that the financial assistance provided by a Federal Instrumentality consisting of price guarantees and loan guarantees is not a grant, nor subsidized energy financing that would reduce the credit otherwise allowed by section 44D of the Code.

The Partnership will operate the Project that will produce X barrels of shale oil a day. The unprocessed shale oil will be sold to an unrelated person at the market price. However, at some future time the Partnership may construct a processing facility to upgrade the oil produced from the shale. The Federal Instrumentality initially will provide the Partnership with Y dollars of loan guarantees for the construction of the project and Z dollars of price support payments for the sale of the shale oil. The Federal Instrumentality will guarantee a price of W dollars per barrel, a price considerably above the present market price. The price support payments per barrel will be the difference in price per barrel between the guaranteed price and the actual market price received by the Partnership. The guaranteed price will be adjusted quarterly for inflation. As the debt of the guaranteed loans is reduced, the allowable total dollar amount for price support payments will increase in proportion above Z, but the maximum price support payments cannot exceed Y plus Z.

In setting the guaranteed price W, the Federal Instrumentality has represented that it took the section 44D credit into account.

Section 44D(a) of the Code provides that there shall be allowed as a credit against income tax an amount dependent on the number of barrels-of-oil equivalent of qualified fuels sold by the taxpayer to an unrelated person during the taxable year, the production of which is attributable to the taxpayer.

Section 44D(c)(1)(A) of the Code provides that the term "qualified fuels" means, among others, oil produced from shale.

Section 44D(b)(3) of the Code provides that the amount of the credit allowable under the subsection (a) (determined after the application of paragraphs (1) and (2)) shall be reduced by the amount which is the product of the amount so determined and a fraction the numerator of which is the sum for the taxable year and all prior taxable years of--

(1) grants provided by the United States, a State, or a political subdivision of a State for use in connection with the project, and

(2) the aggregate amount of subsidized energy financing (within the meaning of section 48(l)(11)(C) provided in connection with 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.

Section 48(l)(11)(A) of the Code provides that if any energy property is financed in whole or part by subsidized energy financing the amount of the energy investment credit allowed is reduced according to a specified formula.

Section 48(l)(11)(C) of the Code provides that for purposes of subparagraph (A), the term "subsidized energy financing" 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.

The Conference Committee report that accompanied the enactment of the Crude Oil Windfall Profit Tax Act of 1980 (Pub. L. 96-223) that amended the Code to add section 44D states that to extent that the credit is available for the production and sale of any of the eligible sources, it is reduced in proportion to federal, state, and local grants, subsidized energy loans and tax-exempt financing provided in connection with the construction or acquisition of the facility or its equipment. For this purpose all tax-exempt financing, and all federal, state, and local grants (whether or not taxable or energy related), but only subsidized loans which are energy related, are taken into account. Loan guarantees are not taken into account. H.R. Rep. No. 96-817 (Conf. Rep.), 96th Cong., 2d Sess. 140 (1980), 1980-3 C.B. 245,300.

The Conference agreement adopted a modified version of the Senate amendment. The Senate committee report states that for purposes of this credit reduction rule, loan guarantees are not considered to be federal grants. It is anticipated that the credit will be taken into consideration by any federal instrumentality in conjunction with decisions relating to loan guarantees; price supports, purchase agreements, etc. S. Rep. No. 96-394, 96th Cong., 1st Sess. 89 (1979), 1980-3 C.B. 131,207.

The provisions of section 48(l)(11) of the Code were added by the Crude Oil Windfall Profit Tax Act of 1980. The Conference report states that subsidized energy financing includes, but is not limited to, the direct or indirect use of tax-exempt bonds for providing funds under such program. Subsidized financing does not include, however, loan guarantees. H.R. Rep. No. 96-817 (Conf. Rep.) 96th Cong., 2d Sess. 137 (1980), 1980-3 C.B. 245, 297.

The financial assistance being given by the Federal Instrumentality to the Partnership is of two kinds, loan guarantees and price support payments. The cited legislative history of section 44D of the Code clearly indicates that loan guarantees are not taken into account in determining the credit reduction provided in section 44D(b)(3) and that loan guarantees are not considered grants.

The legislative history and the wording of section 44D(b)(3) of the Code also indicate that the grants that reduce the credit are grants for the construction or acquisition of the facility. The price support payments are for the sale of shale oil produced at the facility not for its construction or acquisition.

Consequently, it is concluded that neither the loan guarantees nor the price support payments provided by the Federal Instrumentality to the Partnership are grants for purposes of section 44D(b)(3) of the Code.

In regard to subsidized energy financing such term applies only to property that is classified as energy property. A product such as shale oil is not energy property and accordingly price support payments for its sale are not subsidized energy financing.

The legislative history for section 48(l)(11) of the Code indicates that loan guarantees are not considered subsidized energy financing.

Consequently, it is concluded that neither the loan guarantees nor the price support payments provided by the Federal Instrumentality to the Partnership are subsidized energy financing, and therefore are not taken into account for purposes of section 44D(b)(3) of the Code.

No ruling is given or opinion expressed on whether the Partnership would be eligible for the credit allowed by section 44D of the Code if the Partnership upgrades the shale oil by a future processing facility prior to sale.

No ruling is given or opinion is expressed on whether any of the property of the Project is energy property for the purposes of section 48(l) of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent. Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, the ruling will be modified or revoked by adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusions in the ruling. See section 17.04 of Rev. Proc. 84-1, 1984-1, I.R.B. 10,20. However, when the criteria in section 17.05 of Rev. Proc. 84-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

In accordance with the Power of Attorney on file at this office, a copy of this letter is being sent to your authorized Representative.