

#### ISSUE

Whether fuel price-support payments paid by the United States are grants that reduce the amount of credit allowed by section 29 of the Internal Revenue Code (concerning credit for producing fuel from a nonconventional source).

#### FACTS

The taxpayer produces and sells a qualified fuel described in section 29(c)(1) of the Code. The United States pays the taxpayer price-support payments equal to a set price less the market price received.

#### LAW AND ANALYSIS

Section 29 of the Code, which prior to the Tax Reform Act of 1984, 1984-3 C.B. (Vol. 1) 1, was designated Section 44D of the Code, allows a tax credit, depending on the price of crude oil and an inflation factor, for each barrel-of-oil equivalent of qualified fuels produced and sold by the taxpayer to an unrelated person during the year. Section 29(b)(3)(A) reduces the credit by the proportion of all grants provided by the United States for use in connection with a fuel project to the aggregate capital account for the project.

Section 44D of the Code was added by the Crude Oil Windfall Profit Tax Act of 1980, section 231, 1980-3 C.B. 1, 40. The Conference Report explains that the credit is reduced in proportion to federal grants provided in connection with the construction or acquisition of the fuel facility or its equipment. H.R. Rep. No. 96-817 (Conf. Rep.), 96th Cong. 2d Sess. 140 (1980), 1980-3 C.B. 245, 300.

The Senate Committee report states that 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 legislative history indicates that the grants referred to in section 29(b)(3)(A) of the Code are grants for capital costs of the fuel project. Price-support payments are based on the sale price of the fuel, and are not such grants. The legislative history further indicates that price supports do not reduce the credit but are to be taken into account by the granting agency in setting the level of price support. The credit is, therefore, not affected by the price-support payments.

#### HOLDING

Fuel price-support payments paid by the United States are not grants that reduce the credit allowed by section 29 of the Code.