

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:5 -- PLR-153901-02

Date:

December 9, 2002

**LEGEND:**

Taxpayer =

Project =

State =

State Law =

Dear \_\_\_\_\_ :

This letter responds to a letter dated September 24, 2002, submitted on behalf of Taxpayer, requesting a private letter ruling regarding § 45 of the Internal Revenue Code.

Taxpayer represents the following facts:

Taxpayer is currently developing Project in State. Project will produce electricity from wind. Project will generate wind energy and deliver power to customers in the wholesale power market. Taxpayer is currently negotiating a power purchase agreement with an unrelated party to sell electricity produced by Project.

State Law provides a State income tax credit for electricity produced from certain renewable resources, including wind, and sold to an unrelated person. The amount of the State income tax credit is based upon the amount of electricity produced and not the capital cost of construction or acquisition. Taxpayer is not obligated to reinvest any proceeds attributable to the credit in Project or any other project for producing electricity from renewable resources.

Section 45 provides a federal income tax credit for electricity produced from certain renewable resources, including wind, and sold to an unrelated person.

PLR-153901-02

Section 45(b)(3) provides that the amount of the credit determined under § 45(a) with respect to any project for any taxable year (determined after the application of § 45(b)(1) and (2)) shall be reduced by the amount that is the product of the amount so determined for the year and a fraction:

(A) the numerator of which is the sum, for the taxable year and all prior taxable years, 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 provided in connection with the project, and

(iv) the amount of any other credit allowable with respect to any property that is part of the project, and

(B) 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.

The amounts under the preceding sentence for any taxable year shall be determined as of the close of the taxable year.

Section 29(b)(3) provides a similar reduction in the credit allowed by § 29(a), relating to the production and sale of fuel from a nonconventional source.

Regarding the reduction provided by § 29(b)(3), the Conference Report, H.R. Conf. Rep. No. 817, 96<sup>th</sup> Cong., 2d Sess. 140 (1980), 1980-3 C.B. 245, 300, states the following:

To the extent that the [§ 29] 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.

See also, Rev. Rul. 85-77, 1985-1 C.B. 15.

PLR-153901-02

The State income tax credit provided by State Law is directly attributable to the amount of electricity produced and sold by Project and not to the capital cost of construction or acquisition of Project.

Accordingly, based solely on the representations and the relevant law set forth above, we conclude that the amount of any credit under § 45 will not be reduced under § 45(b)(3) because of the State income tax credit provided by State Law.

No opinion is expressed or implied regarding the application of any other provisions of the Code or Income Tax Regulations. Specifically, we express no opinion on whether any other requirement of § 45 is met.

According to the power of attorney on file with the ruling request, a copy of this letter is being sent to Taxpayer and Taxpayer's other authorized representative.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

/s/ Susan J. Reaman

SUSAN J. REAMAN  
Branch Chief, Branch 5  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures:

Copy of letter

Copy for section 6110 purposes