

Private Letter Ruling 8410092, IRC Sec(s). 44D
Dec. 7, 1983

In your request for a private letter ruling of . . . you request a ruling concerning section 44D of the Internal Revenue Code of 1954.

Specifically you request a ruling that the price support payments made by Company C will not be considered "grants" that under section 44D(b)(3) of the Code will reduce the amount of credit allowed under section 44D(a)

The Partnership is a general partnership formed under the laws of the State consisting of Partners A and B, each with equal distributive share. The Partnership was formed for the purpose of producing a Product that is a qualified fuel as defined in section 44D(c)(1) of the Code. The Product will be sold at the open market price. Company C, which is a federal entity, agrees to pay a price support which is the difference between \$ X per Unit adjusted monthly for inflation and the weighted average actual sale price per Unit. This price support is subject to a Maximum Dollar Amount that consists of a minimum Initial Dollar Amount and an Additional Dollar Amount that will vary depending on the outstanding amount of loan guarantees at the time of payment of the price supports. In general to the extent that the Maximum Dollar Amount of loan guarantees is reduced by nonuse, repayment, conversion to other forms of nonguaranteed financing, or by other specified means the amount available for price supports will increase to the maximum amount of the Additional Dollar Amount.

Company C has represented that in setting its price support of \$ X per Unit it took the tax credit for the production of a nonconventional fuel into account.

The proposed transaction between the Partnership and Company C is conditional on obtaining a favorable tax ruling on the issue of this ruling.

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(b)(3) of the Code provides that the amount of the credit allowable under 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 grants provided by the United States, a State, or a political subdivision of a State for use 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.

The Conference Committee report that accompanied the enactment of the Crude Oil Windfall Profit Tax Act of 1980 (Act) (Pub. L. 96-223) which amended the Code to add

section 44D states that to the 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 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 of the Act indicates that the reduction in the credit provided for in section 44D(b)(3) of the Code applies to grants, tax-exempt bonds, and subsidized energy financing provided in connection with the construction or acquisition of the facility. The price support given by Company C is for the sale of the Product from the facility not its construction or acquisition. Although in the facts of this case the total amount of the Additional Dollar Amount for price supports depends on the amount of outstanding loan guarantees at the time the price supports are paid, the committee reports indicate that loan guarantees (whether fixed or variable) are not to be taken into account in calculating the reduction in the credit by reason of section 44D(b)(3) of the Code.

The committee statement that it is anticipated that federal agencies will take the credit into account in decisions relating to price supports implies both that a taxpayer may receive both the credit and price supports and that price supports are not one of the categories of financing for which a reduction in credit is required. Additionally, Company C has represented that it has taken the credit into account in setting its price supports. We thus conclude that under the circumstances the price support payments provided by Company C to the Partnership are not grants for purposes of section 44D(b)(3) of the Code and will not reduce the amount of credit provided under section 44D(a)

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. 83-1, 1983-1 I.R.B. 16, 26. However, when the criteria in section 17.05 of Rev. Proc. 83-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

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