

of the lease term, for a person who is not a member of the lessee group to purchase or lease the facility from X. The facility is not considered to be limited use property.

(e) X builds an electrical generating plant on land owned by Y and leases the plant to Y. The lease term is 40 years, and the plant has an estimated useful life of 50 years. The land is leased to X pursuant to a ground lease for a term of 50 years. The plant is adjacent to a fuel source that it is estimated will last for at least 50 years. Access to this fuel source is necessary for the commercial operation of the plant, and Y has recently obtained the contractual right to acquire all fuel produced from the source for 50 years. Y will use the plant to produce and generate electrical power for sale to a city located 500 miles away. The plant is synchronized into a power grid that makes the sale of electrical power to a number of potential markets commercially feasible. It would not be commercially feasible to disassemble the plant and reconstruct it at a new location. The electrical generating plant is considered to be limited use property because access to the fuel source held exclusively by Y is necessary for the commercial operation of the plant.

(f) The facts are the same as in example (e) except X has an option, exercisable at the end of the lease term of the plant, to acquire from Y the contractual right to acquire all fuel produced from the fuel source for the 10-year period commencing at the end of such lease term. It would be commercially feasible at the end of such lease term for X to exercise this option. Furthermore, it would be commercially feasible, at the end of such lease term, for a person who is not a member of the lessee group to purchase the contractual right to the fuel from X for an amount equal to the option price and purchase or lease the plant from X. The plant is not considered to be limited use property.

#### SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 75-21, 1975-1 C.B. 715, Rev. Proc. 76-30, 1976-2 C.B. 647, and Rev. Proc. 79-48, 1979-2 C.B. 529, are modified and, as modified, are superseded.

#### SECTION 7. EFFECTIVE DATE

This revenue procedure is effective May 7, 2001.

#### SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Edward Schwartz of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Schwartz at (202) 622-4960 (not a toll-free call).

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*26 CFR 601.201: Rulings and determination letters.  
(Also Part 1, sections 38, 61, 162, 167, 467; 1.61-1, 1.162-1, 1.167(a)-1, 1.467-3)*

#### Rev. Proc. 2001-29

#### SECTION 1. PURPOSE

This revenue procedure sets forth the information and representations required to be furnished by taxpayers in requests for advance rulings on leveraged lease transactions within the meaning of Rev. Proc. 2001-28, 2001-19 I.R.B. 1156. Rev. Proc. 2001-28 provides guidelines to be used for advance ruling purposes in determining whether such a transaction is, in fact, a valid lease for federal income tax purposes. The specific terms used in this revenue procedure are defined in Rev. Proc. 2001-28.

#### SECTION 2. BACKGROUND

.01 The checklist set forth in this revenue procedure is designed to ensure the inclusion and order of presentation of necessary information in the initial ruling request so that the Internal Revenue Service can more promptly and efficiently process the request. However, since the information necessary for the issuance of a ruling with regard to any particular transaction depends upon all the facts and circumstances of that case, information in addition to that outlined in the checklist may be required with respect to that transaction.

.02 In view of the complexity of a typical leveraged lease transaction and the voluminous nature of the related documentation, the Service cannot accept the responsibility for raising or considering issues arising out of such provisions that are not specifically brought to its attention.

#### SECTION 3. GENERAL REQUIREMENTS

.01 The lessor, the lessee, and any other party with an interest in the leasing transaction for which a specific ruling is requested must join in the ruling request.

.02 The ruling request must include a summary statement of the facts as described in section 8 of Rev. Proc. 2001-1, 2001-1 I.R.B. 1 (or its successor).

.03 In addition to the information and documents required by section 8 of Rev. Proc. 2001-1, the ruling request must include detailed information required by section 4 of this revenue procedure. If the information requested is not applicable to the parties or to the transaction, an express statement to that effect is required. The response to each item of information requested must include a reference to the page number of any relevant document containing the information that supports the response. Furthermore, portions of the relevant documents supporting a particular response should be underscored or otherwise highlighted and cross-referenced to the appropriate subsection of section 4 of this revenue procedure. All parties joining in the request for ruling are jointly responsible for responses to each item of information requested by section 4 of this revenue procedure, with the exception of section 4.02 for which only the lessor is responsible.

.04 The lessor must also submit copies of any offering circular, prospectus, economic analysis, or other document used to induce the lessor's investment in the leased property (the "Property"). These documents must include an analysis of the projected cash flow to the lessor from the lease transaction including the projected benefits from the tax attributes thereof.

#### SECTION 4. SPECIFIC INFORMATION REQUIRED

##### .01 In general

(1) Describe in detail the type and quantity of the Property.

(2) Identify and describe all parties to the leveraged lease transaction, their respective interests in such transaction, and the relationships that exist between or among such parties.

(3) Submit a diagram of the transaction showing (a) the parties to the transaction, (b) the succession of ownership to

the Property, and (c) the source, amounts, and flow of the funds used to acquire the Property (total acquisition cost within the meaning of § 1012 of the Internal Revenue Code).

(4) Indicate whether the Property is to be temporarily or permanently affixed to or installed on or in land, buildings, or other property. If so, indicate who will own such land, buildings, or other property.

(5) Indicate whether the Property is new, reconstructed, used, or rebuilt. (See §§ 1.48-2 and 1.48-3 of the Income Tax Regulations; Rev. Rul. 68-111, 1968-1 C.B. 29; and Rev. Rul. 70-135, 1970-1 C.B. 10.)

(6) Indicate when, where, and how the Property will be, or has been, first placed in service or use.

#### .02 Minimum Unconditional At Risk Investment

The lessor must:

(1) Indicate the total acquisition cost (within the meaning of § 1012) of the Property.

(2) Indicate when and in what amounts the lessor did or will make its Equity Investment or incur personal liability for such Equity Investment.

(3) Indicate the conditions under which the lessor would be entitled to a return of any portion of its Equity Investment or would be released from any personal liability for such Equity Investment.

(4) Submit a representation of the net worth of the lessor and financial data to support the representation, including, for example, audited balance sheets or unaudited balance sheets with a representation that the latter are prepared in accordance with generally accepted accounting principles.

(5) Submit an analysis demonstrating that the lessor's Equity Investment will remain equal to at least 20 percent of the cost of the Property at all times throughout the lease term. This analysis must demonstrate that throughout the lease term the items designated as (a), (b), (c), and (d) below solve the formula "(a)-(b) never exceeds (c) + (d)."

(a) The projected cumulative payments required to be paid by the lessee to or for the lessor.

(b) The projected cumulative disbursements required to be paid by or

for the lessor in connection with the ownership of the Property, excluding the lessor's initial Equity Investment, but including any direct costs to finance the Equity Investment.

(c) The excess of the lessor's initial Equity Investment over 20 percent of the cost of the Property.

(d) A cumulative *pro rata* portion of the projected profits from the transaction (exclusive of tax benefits). Profit for this purpose is the excess of the sum of (i) the amounts required to be paid by the lessee to or for the lessor over the lease term plus (ii) the value of the residual investment referred to in section 4.01(3) of Rev. Proc. 2001-28, over the aggregate disbursements required to be paid by or for the lessor in connection with the ownership of the Property, including the lessor's initial Equity Investment and any direct costs to finance the Equity Investment.

(6) Furnish an opinion, from a qualified expert who has professional knowledge of the type of property subject to the lease, regarding:

(a) the fair market value of the Property at the end of the lease term, determined in accordance with section 4.01(3) of Rev. Proc. 2001-28, and the manner in which such fair market value was determined;

(b) the cost to the lessor, if any, of the removal and delivery of possession of the Property to the lessor at the end of the lease term; and

(c) the remaining useful life of the Property at the end of the lease term, and the manner in which such useful life was determined.

#### .03 Lease Term and Renewal Options

Indicate the period for which the Property will be leased initially, if there are any provisions for the renewal or extension of such period, and, if so, on what terms.

#### .04 Purchase and Sale Rights

(1) Indicate whether any member of the Lessee Group or any other party has a contractual obligation or right to purchase all or any part of the Property at any time, and, if so, when, under what conditions, and at what price.

(2) Indicate whether the lessor or any other party has a contractual right to cause any party to purchase the Property, and if so, when and under what conditions.

(3) Indicate whether the lessor, a shareholder of the lessor, or a party related to the lessor (within the meaning of § 318), or any other party who has joined in the request for a ruling has any present intention to acquire a contractual right to cause any party to purchase or sell the Property, and, if so, when and under what conditions.

(4) Indicate whether the lessor may abandon the Property to any party at any time, and if so, when, to whom, and under what conditions.

#### .05 No Investment by Lessee

(1) Indicate whether any member of the Lessee Group may be required to furnish any part of the cost of the Property, and if so, when and under what conditions.

(2) Submit a representation that at the commencement of the term of the lease neither a Nonseverable Improvement, nor a Severable Improvement (other than a Severable Improvement of a kind customarily furnished by purchasers or lessees of property of the kind subject to the lease) is required in order to complete the property for its intended use by the lessee.

(3) If Severable Improvements may be made to the Property, indicate who will own the Severable Improvements and identify the parties who will provide the funds necessary to purchase them.

(4) Indicate whether any Severable Improvement is to be the subject of a contract or option for purchase or sale, and if so, describe the contract or option terms.

(5) If Nonseverable Improvements may be made to the Property, identify the parties who will provide the funds necessary to purchase them.

(6) Indicate whether a member of the Lessee Group may receive compensation, directly or indirectly, for its interest in any Nonseverable Improvement.

(7) Indicate whether the lease states that the addition of any Nonseverable Improvement will not cause the Property to become limited use property.

(8) Indicate whether a member of the Lessee Group may provide the cost of a Nonseverable Improvement that is not described in one of the subparagraphs of section 4.04(3)(a) of Rev. Proc. 2001-28.

(9) Indicate whether the lease (or any document or other agreement) requires a member of the Lessee Group either to make a specific Nonseverable Improvement, or to make Nonseverable Improvements of a specific value or minimum value.

(10) Indicate whether the transaction contains any cost overrun provisions, who must pay the cost overrun, and whether the lease provides for an adjustment to rents to compensate the lessor for any additional cost incurred because of cost overruns.

(11) If a member of the Lessee Group may furnish amounts to pay for the cost of a Nonseverable Improvement, indicate which subparagraph of section 4.04(3)(a) of Rev. Proc. 2001-28 describes the Nonseverable Improvement.

*.06 No Lessee Loans or Guarantees*

(1) Indicate whether any member of the Lessee Group will guarantee an indebtedness incurred in connection with the acquisition of the Property by the lessor and, if so, under what terms and conditions.

(2) Indicate whether any member of the Lessee Group directly or indirectly made or will make any other guarantees as a part or result of the lease transaction. If so, describe such guarantees.

*.07 Profit Requirement*

(1) Submit an analysis demonstrating that the lessor will receive a profit from the transaction exclusive of benefits from the tax attributes thereof. This analysis should demonstrate that the items identified as (a), (b), and (c) below will solve the formula "(a) + (b) exceed (c)."

(a) The projected aggregate payments required to be paid by the lessee to or for the lessor over the lease term.

(b) The value of the residual investment described in section 4.01(3) of Rev. Proc. 2001-28.

(c) The projected sum of the aggregate disbursements required to be paid by or for the lessor in connection with the ownership of the Property, including the lessor's initial Equity Investment, and any direct costs to finance the Equity Investment.

(2) Submit an analysis demonstrating that the lessor will have a projected positive cash flow from the lease transaction. This analysis must contain the

following information in order to demonstrate that the items identified as (a) and (b) will solve the formula "(a) exceeds (b) by a reasonable minimum amount."

(a) The projected aggregate payments required to be paid by the lessee to or for the lessor over the lease term.

(b) The projected aggregate disbursements required to be paid by or for the lessor in connection with the ownership of the Property, excluding the lessor's initial Equity Investment, but including any direct costs to finance the Equity Investment.

*.08 Other Considerations: Limited Use Property*

(1) Indicate whether the Property is expected to be useful or usable by the lessor at the end of the lease term and capable of continued leasing or transfer to any party. If such a representation is made, demonstrate its commercial feasibility.

(2) Indicate whether the Property would be useful or usable at the end of the lease term by a party other than a member of the Lessee Group, and if so, describe such use.

(3) Indicate whether the Property needs to be dismantled, disconnected, or removed from any site on which it was placed or installed in order for possession thereof to be returned to the lessor at the end of the lease term. If so:

(a) Indicate whether and how such dismantling, disconnection, or removal will affect the value of the Property for the purpose for which it was originally intended to be used, and

(b) Demonstrate the commercial feasibility of reassembling, reconnecting, or installing the Property at another location.

*.09 Other*

(1) Set forth the details of the repayment of the portion of the total acquisition cost borrowed by the lessor (debt service), including an analysis of the anticipated repayment of principal and interest on such debt by the lessor.

(2) List and explain all provisions of the lease transaction relating to indemnities, termination, obsolescence, casualty, stipulated casualty value, and insurance.

(3) State that if the Service rules that the lessor is the owner of the

Property for federal income tax purposes at the time that the Property is first placed in service or use, the lessee will not claim that it is such an owner at such time.

**SECTION 5. OTHER INSTRUCTIONS**

Documents that have been submitted with the request for an advance ruling may, as indicated below, be amended by the parties, prior to the date on which the Property is first placed in service or use. A complete explanation of the changes must be submitted together with specific references to both the original and amended documents. If, as a result of the amended documents, the responses required by section 4 of this revenue procedure are modified, the revised responses must be brought to the attention of the Service in such a fashion as to be readily understandable. In situations where the transaction is materially revised by the amendments, the original request for advance ruling, together with all submissions including the amended documents, will be considered by the Service to be a new request for advance ruling received on the date that it receives the amended documents. The Service ordinarily will not rule on the consequences of a proposed amendment that purports to relate back to the time when the Property was first placed in service, or purports to affect the issue of the ownership of the Property at that time.

**SECTION 6. EFFECT ON OTHER DOCUMENTS**

Rev. Proc. 75-28, 1975-1 C.B. 752, and Rev. Proc. 79-48, 1979-2 C.B. 529, are modified, and as modified, are superseded.

**SECTION 7. PAPERWORK REDUCTION ACT**

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-1738.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information is contained in section 4 of this revenue procedure. This information is required to establish the economic substance of the transaction and its *bona fides* as a true lease. The likely respondents are individual taxpayers and corporations.

The estimated total annual reporting burden is 800 hours.

The estimated annual burden per respondent will vary from 60 hours to 100 hours, depending on individual circumstances, with an estimated average of 80 hours. The estimated number of respondents is 10.

The estimated annual frequency of responses is on occasion.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by § 6103.

## SECTION 8. EFFECTIVE DATE

This revenue procedure is effective May 7, 2001.

## SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Edward Schwartz of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Schwartz at (202) 622-4960 (not a toll-free call).

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*26 CFR 601.201-1. Rulings and determination letters.*

*(Also Part I, § 29.)*

## Rev. Proc. 2001-30

### SECTION 1. PURPOSE

This revenue procedure informs the public of the Internal Revenue Service's decision to issue private letter rulings regarding whether a solid fuel produced from coal is a qualified fuel under § 29(c)(1)(C) of the Internal Revenue Code under the circumstances described in section 3 of this revenue procedure.

### SECTION 2. BACKGROUND

Section 2.01 of Rev. Proc. 2001-3, 2001-1 I.R.B. 111, provides that whenever appropriate in the interest of sound tax administration, it is the policy of the Service to answer inquiries of individuals and organizations regarding their status for tax purposes and the tax effects of their acts or transactions, prior to the filing of returns or reports that are required by the revenue laws. There are, however, certain areas in which, because of the inherently factual nature of the problems involved, or for other reasons, the Service will not issue rulings or determination letters.

Section 4 of Rev. Proc. 2001-3 sets forth those areas in which rulings or determination letters will not ordinarily be issued. "Not ordinarily" means that unique and compelling reasons must be demonstrated to justify the issuance of a ruling or determination letter. Section 2.01 of Rev. Proc. 2001-3.

Section 4.02(1) of Rev. Proc. 2001-3 provides that the Service will not ordinarily issue rulings or determination letters regarding any matter in which the determination requested is primarily one of fact, for example, market value of property, or whether an interest in a corporation is to be treated as stock or indebtedness.

Section 5 of Rev. Proc. 2001-3 sets forth those areas under extensive study in which rulings or determination letters will not be issued until the Service resolves the issue through publication of a revenue ruling, revenue procedure, regulations, or otherwise.

Section 5.01 of Rev. Proc. 2001-3 provides that the Service will not issue rulings or determination letters on whether a solid fuel other than coke or a fuel produced from waste coal is a qualified fuel under § 29(c)(1)(C). Waste coal for this purpose is limited to waste coal fines from normal mining and crushing operations and does not include fines produced (for example, by crushing run-of-mine coal) for the purpose of claiming the credit.

Section 5.01 of Rev. Proc. 2001-3 supersedes Rev. Proc. 2000-47, 2000-46 I.R.B. 482. Rev. Proc. 2000-47 was published because concern had been raised that taxpayers were claiming the § 29 credit for processing coal in ways that

may not have been intended by the Congress. Rev. Proc. 2000-47 requested comments concerning the standard to be applied in determining whether fuel produced from coal is a solid synthetic fuel. The Service received extensive comments.

Section 29 provides a credit against income tax for the production and sale of "qualified fuels" produced from a non-conventional source. Section 29(c)(1)(C) provides that qualified fuels include liquid, gaseous, or solid synthetic fuels produced from coal (including lignite).

Rev. Rul. 86-100, 1986-2 C.B. 3, adopts for purposes of § 29(e)(1)(C) the definition of synthetic fuel in § 1.48-9(c)(5) of the Income Tax Regulations. Section 1.48-9(c)(5)(ii) provides that, to be "synthetic," a fuel must differ significantly in chemical composition, as opposed to physical composition, from the substance used to produce it. Rev. Rul. 86-100 describes favorably processes such as gasification, liquefaction, and production of solvent refined coal that result in substantial chemical changes to the entire coal feedstock rather than changes that affect only the surface of the coal.

Section 29(f) provides that § 29 applies to qualified fuels that are produced in a facility placed in service after December 31, 1979, and before January 1, 1993, and that are sold before January 1, 2003. Section 29(g)(1)(A) provides that a facility for producing qualified fuels described in § 29(c)(1)(C) is treated for this purpose as being placed in service before January 1, 1993, if the facility is placed in service before July 1, 1998, pursuant to a binding written contract in effect before January 1, 1997. For a facility that meets this condition and is originally placed in service after December 31, 1992, § 29(g)(1)(B) provides that the § 29 credit applies to qualified fuels that are sold before January 1, 2008.

Property is "placed in service" in the taxable year the property is placed in a condition or state of readiness and availability for a specifically assigned function. See, for example, § 1.167(a)-11(e)(1)(i). Thus, the § 29 credit is not allowed for fuel produced in a facility that was originally placed in service for a function other than producing qualified fuel under § 29(c)(1)(C) and was not con-