

To whom it may concern:

Attached below is a comment letter regarding H.R. 6264 and S. 4026, the Tax Technical Corrections Act of 2006. Please contact me at the number below if you have any difficulties opening the attached document.

Regards,  
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FILE NO: 68080.2

October 31, 2006

The Honorable William M. Thomas  
Chairman  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Charles B. Rangel  
Ranking Member  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Chuck Grassley  
Chairman  
Senate Finance Committee  
U.S. Senate  
Washington, D.C. 20510

The Honorable Max Baucus  
Ranking Member  
Senate Finance Committee  
U.S. Senate  
Washington, D.C. 20510

**Re: Comments on H.R. 6264 and S. 4026, the Tax Technical Corrections Act of 2006 (TTCA 2006)**

Dear Chairman Thomas and Ranking Member Rangel:

In response to Advisory Release No. FC-26 (Sept. 29, 2006), Hunton & Williams LLP is submitting this comment letter regarding TTCA 2006 on behalf of one of its clients. Specifically, our comments relate to Section 48A of the Internal Revenue Code ("Section 48A") as enacted by Section 1307 of the Energy Policy Act of 2005.

Section 48A provides a 20 percent investment tax credit for certified qualifying advanced coal projects using integrated gasification combined cycle technology ("IGCC") and a 15 percent investment tax credit for projects using an advanced coal-based generation technology other than IGCC. The Secretary of Treasury is authorized to allocate a maximum of \$800 million in tax credits for IGCC projects under Section 48A (\$267 million to projects using bituminous coal, \$267 million to projects using subbituminous coal and \$266 million to project using lignite) and a maximum of \$500 million in tax credits for project using an advanced coal-based generation technology other than IGCC. In order to qualify, a project must (i) be certified by the Department of Energy ("DOE"), (ii) receive an allocation of tax credits from the Internal Revenue Service (the "IRS"), and (iii) meet certain requirements set forth in Section 48A. One such requirement is that the generating unit must be "designed to meet" certain emission performance requirements, including 99 percent removal of sulfur dioxide.



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In order to be considered in the initial round of tax credit allocations, a taxpayer must have submitted an application for DOE certification to DOE by June 30, 2006. DOE was required to notify the IRS as to which projects received DOE certification by no later than October 1, 2006. Taxpayers were required to submit an application to the IRS for an allocation of Section 48A tax credits by no later than October 2, 2006. The IRS is expected to notify taxpayers by November 30, 2006 as to whether they received an allocation.

We understand that companion bills have been introduced in the House and the Senate (the "Bills") which would amend the sulfur dioxide requirement to provide that such requirement will be satisfied if the unit is designed to achieve either 99 percent sulfur dioxide removal or the achievement of an emission limit of 0.04 pounds of sulfur dioxide per million Btu, on a 30-day average. H.R. 6173 (Sept. 25, 2006); S. 3883 (Sept. 11, 2006). This revised requirement would be applicable to all Section 48A projects and take effect as if included in the Energy Policy Act of 2005. Although TTCA 2006 does not currently contain the amendment to Section 48A proposed by the Bills, if such amendment is included and enacted, it would result in an increase in sulfur dioxide emissions beyond those contemplated by Section 48A as originally enacted.

In addition, the deadlines for application for DOE certification and for application for a tax credit allocation from the IRS for the initial round of allocations has passed (June 30, 2006 and October 2, 2006, respectively). Because the amendments made by the Bills would take effect as if included in the Energy Policy Act of 2005, certain taxpayers may not have filed applications due to a belief that they did not meet the sulfur dioxide removal requirement as originally enacted. These taxpayers would be prejudiced by a retroactive amendment. Similarly, projects that meet the sulfur dioxide removal requirement as originally enacted may also be prejudiced by a retroactive amendment.

Accordingly, we respectfully request that the amendment to Section 48A provided in the Bills not be included in TTCA 2006 as it would increase sulfur dioxide emissions and prejudice certain taxpayers that did not meet the initial Section 48A deadlines and those that met the deadlines and the sulfur dioxide removal requirement as originally enacted. However, if the tax writing committees believe the amendment is appropriate to be included in TTCA 2006, we respectfully recommend that the amendment be effective on a prospective basis after the date of enactment. Thus, projects that meet the new alternative sulfur dioxide removal requirement would be eligible to participate in subsequent tax credit allocation rounds.

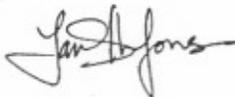
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Finally, we understand that the DOE did not certify any of the Section 48A IGCC projects using subbituminous coal based on an assumption that such projects could not meet the 99 percent sulfur dioxide removal requirement. This assumption is incorrect. Although subbituminous coal is a low-sulfur coal, 99 percent removal (or more) of sulfur dioxide is possible, for example, when additional processes are incorporated to further remove pollutants such as sulfur from the synthesis gas. Moreover, Section 48A(f)(1) of the Code provides that an electric generation unit uses "advanced coal-based generation technology" if the unit "is designed to meet" certain performance requirements including a "design level for the project" of 99 percent sulfur dioxide removal. Thus, if a taxpayer presented technical and engineering information demonstrating that the project was designed to meet this requirement, the project should be certified by DOE. If the project, when completed and operational, does not meet the performance characteristics, the IRS can appropriately address this issue on audit.

We would welcome the opportunity to discuss our comments with you in more detail. Please contact me at (804) 788-8746 if you have any questions or require further information.

Respectfully submitted,



Laura Ellen Jones

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