Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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CC:PSI:B01
PLR-147500-12

Date:
April 10, 2013

Legend

X =

State =

Dear :

This responds to a letter dated November 1, 2012, submitted on behalf of X by X's authorized representative, requesting a ruling under § 7704(d)(1)(E) of the Internal Revenue Code.

FACTS

X is a limited partnership organized under the laws of State. X is a publicly traded partnership within the meaning of § 7704(b). X is principally engaged in the processing, transportation, storage, and distribution of natural gas, natural gas liquids, and crude oil. X, through a subsidiary, also provides fluid handling services to customers engaged in the exploration for, and the development and production of, oil and natural gas.

Fracturing is a technique by which fluids are pumped into an oil or gas well at high pressure to fracture geologic formations and open up pathways for the oil or gas to flow. To this end, X will supply, and provide transportation and tank storage services with respect to, production fluid appropriate for the fracturing process to operators of oil and gas wells. X will also remove, store, and transport flowback generated in the fracturing process, as well as naturally occurring produced water contained in the geological formation from which the oil and gas is procured. X will treat the flowback and produced water so that it can be reused in a fracturing process or be disposed of consistent with environmental regulations. Where possible, X will extract and process naturally occurring minerals and chemicals, including barite, hydrochlochloric acid, and chlor-alkali products, from the produced water for commercial wholesale.

X will charge its customers fees for the provision of fractionation fluids and other fluids necessary for the drilling and completion of oil and natural gas wells, which fees may include tank storage and transportation components. X will also charge its customers fees or the removal, treatment, and disposal of flowback and produced water, which fees may include tank storage and transportation components. X will also earn income from the non-retail sale of the minerals and chemicals it extracts from the produced water.

LAW AND ANALYSIS

Section 7704(a) provides that, except as provided in § 7704(c), a publicly traded partnership will be treated as a corporation.

Section 7704(b) provides that the term "publicly traded partnership" means any partnership if (1) interests in that partnership are traded on an established securities market, or (2) interests in that partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

Section 7704(c)(1) provides that § 7704(a) does not apply to a publicly traded partnership for any taxable year if such partnership meets the gross income requirements of § 7704(c)(2) for the taxable year and each preceding taxable year beginning after December 31, 1987, during which the partnership (or any predecessor) was in existence.

Section 7704(c)(2) provides, in relevant part, that a partnership meets the gross income requirements of § 7704(c)(2) for any taxable year if 90 percent or more of the gross income of the partnership for the taxable year consists of qualifying income.

Section 7704(d)(1)(E) provides that the term "qualifying income" includes income and gains derived from the exploration, development, mining or production, processing, refining, transportation (including pipelines transporting gas, oil, or products thereof), or the marketing of any mineral or natural resource (including fertilizer, geothermal energy, and timber).

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the gross income derived by X from the supply, transportation, and storage of fractionation fluid and other fluids for oil and natural gas wells, and from the removal, treatment, and disposal of fracturing flowback and produced water, including the provision of frac tanks and transportation services, to oil and natural gas producers for use in their exploration for and production of oil and natural gas resources constitutes qualifying income under § 7704(d)(1)(E). We further conclude that the gross income derived by X from recycling waste water, including the extraction, processing, and non-retail sale of naturally occurring minerals and chemicals in the water, will constitute qualifying income under § 7704(d)(1)(E).

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of this case under any other provision of the Code. Specifically, we express or imply no opinion as to whether X is taxable as a partnership for federal income tax purposes.

This ruling is directed only to the taxpayer requesting it. However, in the event of a technical termination of X under § 708(b)(1)(B), the resulting partnership may to continue to rely on this ruling in determining its qualifying income under § 7704(d)(1)(E). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Laura C. Fields
Laura C. Fields
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: