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, ID No.

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Refer Reply To:
CC:PSI:B01
PLR-121490-13

Date:
October 29, 2013

Legend

X =

State =

Dear :

This letter responds to a letter dated May 2, 2013, submitted on behalf of X by X's authorized representatives, 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 business of operating a system of petroleum product and crude pipelines, storage tanks, distribution terminals, and loading rack facilities.

X intends to acquire an air separation unit ("ASU") located in a crude oil refinery. The ASU is a permanent piece of equipment built on the site of the refinery. The ASU is integrated into the refinery facilities and all of the ASU's existing capacity is dedicated to supply nitrogen and oxygen to the refinery. X represents that it will not use the ASU outside of its present activities integrated with the crude oil refinery operations. X may acquire or construct ASUs located at other crude oil refineries to supply and service those other refineries in a similar manner.

X represents that nitrogen and oxygen are essential elements used in operating a refinery. Refineries typically either have their own ASU on site to produce nitrogen and oxygen, or purchase nitrogen and oxygen from third-party suppliers. Nitrogen is used to displace oxygen in tanks, hoses, piping, and equipment throughout the refinery in order to prevent the potential for unwanted reactions and prevent corrosion damage caused by air and moisture. Oxygen is used to treat byproducts from the refining process. For example, oxygen is used to increase capacity in a process that converts toxic hydrogen sulfide into elemental sulfur and water.

The ASU that X intends to acquire uses a cryogenic process to separate atmospheric air into nitrogen and oxygen. By adjusting flow rates, temperature, and pressure, the ASU concentrates oxygen to a purity of 97% and removes it to one tower while nitrogen is concentrated to a purity of 98% and separated in another tower. The oxygen and nitrogen streams are then directed to plant supply headers.

An employee of X will provide on-site supply services, consulting with the refinery personnel regarding the refinery’s demand for nitrogen and oxygen, the inventory levels of nitrogen and oxygen at the ASU, and related maintenance issues at the refinery.

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 the representations made, we conclude that income derived by X from the operation of an onsite ASU used to supply nitrogen and oxygen to a crude oil refinery for use in the processing, refining, and transportation of crude oil and refined petroleum products, and the provision of related services, constitutes qualifying income within the meaning of § 7704(d)(1)(E).

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed as to whether X meets the 90 percent gross income requirement of § 7704(c)(1) in any taxable year for which this ruling may apply.

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 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 representatives.

Sincerely,

David R. Haglund
David R. Haglund
Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: