

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
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Date:  
November 08, 2013

X =

State =

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Dear

This responds to your letter dated May 3, 2013, and subsequent correspondence, submitted on behalf of X, requesting a ruling concerning the qualifying income exception to the publicly traded partnership rules of § 7704 of the Internal Revenue Code.

**FACTS**

X is a limited partnership organized under the laws of State. X, through affiliated limited partnerships and disregarded entities, is engaged in a variety of business lines, which include the mining, processing, marketing and transportation of various natural resources through X's service personnel and operating assets.

**RIN ACTIVITIES**

A renewable identification number (RIN) is a 38 character code generated by the producer or importer of renewable fuel, which uniquely identifies the batch of renewable fuel and each gallon in that batch. The code identifies, among other things, the company producing the renewable fuel, the facility in which the fuel was produced, the year in which the fuel was produced and a five digit batch number assigned by the producer. The complete RIN is assigned to a batch of renewable fuel no later than when ownership of that renewable fuel is transferred to another party. The RIN must be transferred with the renewable fuel until the point the renewable fuel is blended into a

conventional fuel or sold in the retail fuel market, at which point the RIN is “separated” from the fuel and becomes freely transferrable separate and apart from the renewable fuel.

X accumulates RINs through two unique processes. First, as a wholesale distributor of refined products, X sells gasoline, most of which contains a certain percentage of ethanol. X purchases the ethanol feedstock from third-party suppliers with RINs already associated with each gallon of ethanol feedstock purchased. When X blends the feedstock ethanol into gasoline at facilities that are owned by X, the RINs previously associated with the ethanol feedstock disassociate and become merchantable. Second, X owns and operates a biodiesel refinery that produces renewable fuel from soy oil, animal fats, and waste cooking oil for use in blending with traditional diesel products. The process of creating biodiesel generates a new RIN that associates with each gallon of biodiesel within each batch of biodiesel that is created by X. When X blends this biodiesel into conventional fuels at its facilities, the RINs previously associated with such biodiesel disassociate and become merchantable.

X accumulates a significant amount of RINs that exceed any obligation X has in connection with its renewable volume obligation under the Renewable Fuel Standard program. From time to time, X sells its excess RINs to third parties through a broker involved in trading RINs or directly to a producer or importer of conventional fuel. X represents that the sale of RINs is merely a second revenue stream derived from X's processing and marketing of a natural resource.

X requests a ruling that income from the sale of RINs resulting from X's processing and marketing of gasoline and diesel fuel constitutes qualifying income under § 7704(d)(1)(E).

## **MARKETING OF REFINED FUELS**

Mining activities involved in the development of coal mines and the production of coal involve the use of heavy machinery and advanced equipment, which consume substantial quantities of refined fuels. Such refined fuels must be provided for the machinery and equipment at the mine site, either directly by or on behalf of the mining company. X earns income from fuel delivery services (including the sale of refined fuel and delivery services attendant to the sale) provided to coal mining companies in support of the mining of coal.

X represents that fuel delivery is a critical and necessary part of developing coal mines and producing coal in the regions served by X. X further represents that coal production in these regions would terminate or be significantly curtailed if X did not provide fuel delivery services. X's customers typically engage in coal mining operations located far from conventional roads and access points, and conventional fuel delivery vehicles cannot be used to service such customers. X further represents that the vehicles used

in the delivery process are specially customized to deliver refined fuels to above-ground tanks and other non-conventional delivery points in remote locations and are not designed or intended to be used for conventional fuel delivery of refined products to retail gas stations. X also represents that approximately a% of the gross margin earned from marketing refined fuels is directly attributable to the delivery and other related services associated with marketing refined fuels to customers engaged in mining natural resources in remote locations with the remainder attributable to the bare supply of refined fuels.

X requests a ruling that income from the wholesale marketing of refined fuels to customers engaged in the mining of natural resources that constitute a part of the exploration, development, mining or production, processing and marketing of natural resources will constitute qualifying income under § 7704(d)(1)(E).

### **LAW AND ANALYSIS**

Section 7704(a) provides generally that a publicly traded partnership shall be treated as a corporation.

According to § 7704(b), the term “publicly traded partnership” means any partnership if (1) interests in the partnership are traded on an established securities market, or (2) interests in the partnership are readily tradable on a secondary market (or its substantial equivalent).

Section 7704(c)(1) exempts from treatment as a corporation any publicly traded partnership for any tax year if the partnership meets the gross income requirements of § 7704(c)(2) for that year and each preceding tax year beginning after December 31, 1987, during which the partnership (or any predecessor) was in existence. Section 7704(c)(2) provides that a partnership meets the gross income requirement of § 7704 for any tax year if 90% or more of the partnership’s gross income for that year consists of qualifying income.

Section 7704(d)(1)(E) defines “qualifying income” to include 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), industrial source carbon dioxide, or the transportation or storage of any fuel described in § 6426(b), (c), (d), or (e), or any alcohol fuel defined in § 6426(b)(4)(A) or any biodiesel fuel as defined in § 40A(d)(1).

The Senate Report accompanying the Technical and Miscellaneous Revenue Act of 1988 states:

With respect to marketing of minerals and natural resource (e.g., oil and gas and products thereof), the Committee intends that qualifying income be income from marketing at the level of exploration, development, processing or refining the mineral or natural resource. By contrast, income from marketing minerals and natural resources to end users at the retail level is not intended to be qualifying income. For example, income from retail marketing with respect to refined petroleum products (e.g., gas station operations) is not intended to be treated as qualifying income.

S. Rep. No. 445, 100<sup>th</sup> Cong., 2<sup>nd</sup> Sess. 424 (1988).

### **CONCLUSION**

Based solely on the facts submitted and representations made, we conclude that X's gross income from (1) the sale of RINs and (2) X's refined fuel delivery services provided to customers engaged in the mining of natural resources (excluding any portion of such income derived from the delivery or sale of products to customers who are not engaged in drilling, exploration and production, or mining activities) is qualifying income within the meaning of § 7704(d)(1)(E).

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, we express no opinion 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. To the extent that X's gross income from the sale of RINs is attributable to sales to brokers, traders, or any other purchasers of RINs for the purpose of resale, this letter ruling will not apply in determining whether such income constitutes qualifying income under § 7704(d)(1)(E). To the extent that X's gross income from marketing refined fuels is not attributable to its customers' § 7704(d)(1)(E) activities (i.e., to activities of the customer, such as drilling, exploration and production, or mining of a mineral or natural resources, that would generally be expected to produce gross income that is qualifying income under § 7704(d)(1)(E) regardless of the customer's Federal tax classification), this letter ruling will not apply in determining whether the income that may be derived by X from such other uses constitutes qualifying income under § 7704(d)(1)(E).

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,

Melissa C. Liquerman  
Chief, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):  
Copy of this letter  
Copy for § 6110 purpose