

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

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Refer Reply To:  
CC:PSI:B02  
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December 16, 2013

Legend

X =

State =

Dear \_\_\_\_\_ :

This responds to a letter dated June 21, 2013, 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 intends to become a publicly traded partnership within the meaning of § 7704(b) by effecting an initial public offering of units. X expects to earn income principally by assessing fees for gathering and transporting volumes of oil and natural gas. X's primary assets will consist of ownership interests in gathering systems and pipelines. As a complement to its primary business, X expects to also earn income by providing essential fluid handling services to oil and natural gas producers engaged in the exploration, development and production of oil and natural gas through X's assets and service personnel. X expects to provide all such services through affiliated operating limited partnerships, limited liability companies or disregarded entities.

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 expects to generate income from the supply of fresh water for use in the fracturing process, the transportation of fracturing fluid to producers' well sites for use in exploration and production activities, and the transportation of flowback produced water and other drilling and production wastes from producers' well sites to disposal facilities owned by third parties. The transportation will be provided by a combination of pipelines, trucks and other transportation equipment. X expects to own the transportation assets that it will use to provide fluid handling services but may also earn income from the operation of transportation assets owned by another party.

### **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), [or] industrial source carbon dioxide, or the transportation or storage of any fuel described in (b),(c),(d) or (e) of § 6426, or any alcohol fuel defined in § 6426(b)(4)(A) or any biodiesel fuel as defined in § 40A(d)(1).

### **CONCLUSION**

Based solely on the facts submitted and representations made, we conclude that the gross income derived by X from the supply of fresh water, the transportation of fracturing fluid to producers' well sites for use in exploration and production activities, and the transportation of fracturing flowback and produced water to disposal facilities owned by third parties constitutes 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 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,

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

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

cc: