

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

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CC:PSI:B03
PLR-128828-13

Date:
September 11, 2013

X =

State =

Year =

Dear _____ :

This letter responds to a letter dated June 25, 2013, submitted on behalf of X by X's authorized representatives, 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 publicly traded limited partnership organized under the laws of State. X was formed in Year to own, operate, acquire, and develop a diversified portfolio of energy service assets. X earns income 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. In one distinct business line, X earns income derived from the wholesale marketing and transportation of commercial silica (also known as frac sand) to customers engaged in the exploration and production of oil and natural gas. In particular, X will sell frac sand for use in the hydraulic fracturing techniques used to extract oil and natural gas.

Hydraulic fracturing is a technique in which fluids (the fracturing fluids) are pumped into an oil or natural gas well at high pressured to fracture geologic formations and open up pathways for the oil or natural gas to flow to the well and be produced or extracted. The fracturing fluid usually consists of a combination of water, a proppant (a

type of granular material), and other additives. Frac sand is one type of proppant used in the hydraulic fracturing process.

X's frac sand operations focus on its mining, processing, marketing, and transportation. X derives the majority of its income from frac sand through its marketing to oilfield service companies that resell such frac sand to customers engaged in the exploration and production of oil and natural gas as a part of a services package to be used in hydraulic fracturing activities. Occasionally, X will market its frac sand directly to customers engaged in the exploration and production of oil and natural gas for use in such producers' hydraulic fracturing activities. In addition, in some cases X may provide transportation services with respect to the frac sand, for which it will charge a fee.

LAW

Section 7704(a) provides that a publicly traded partnership shall 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) interest in that partnership are readily tradable on a secondary market (or substantial equivalent thereof).

Section 7704(c)(1) provides that § 7701(a) shall not apply to any publicly traded partnership for any taxable year if such partnership met the gross income requirements of § 7704(c)(2) for such 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) explains 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 such partnership for such taxable year is qualifying income.

Section 7704(d)(1)(E) provides that the term "qualifying income" includes income or 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, or timber).

Section 7704(d)(1) clarifies that, for purposes of § 7704(d)(1)(E), the term "mineral or natural resource" means any product of a character with respect to which a deduction for depletion is allowable under § 611; except that such term shall not include any product described in § 613(b)(7)(A) or (B) (describing soil, sod, dirt, turf, water, mosses, and minerals from sea water, the air, or similar inexhaustible sources).

The Conference Report accompanying the Omnibus Budget Reconciliation Act of 1987, in discussing the type of qualifying income described in § 7704(d)(1)(E), provides the following:

Income and gains from certain activities with respect to minerals or natural resources are treated as passive-type income. Specifically, natural resources include fertilizer, geothermal energy, and timber, as well as oil, gas or products thereof ... For this purpose, oil, gas, or products thereof means gasoline, kerosene, number 2 fuel oil, refined lubricating oils, diesel fuel, methane, butane, propane, and similar products which are recovered from petroleum refineries or oil field facilities. Oil, gas, or products thereof are not intended to encompass oil or gas products that are produced by additional processing beyond that of petroleum refineries or field facilities, such as plastics or similar petroleum derivatives. Income of certain partnerships whose exclusive activities are transportation and marketing activities is not treated as passive-type income. For example, the income of a partnership whose exclusive activity is transporting refined petroleum products by pipeline is intended to be treated as passive-type income, but the income of a partnership whose exclusive activities are transporting refined petroleum products by truck, or retail marketing with respect to refined petroleum products (e.g., gas station operations) is not intended to be treated as passive type income.

H.R. Rep. No. 495, 100th Cong., 1st Sess. 943 (1987), 1987-3 C.B. 226-227.

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

With respect to marketing of minerals and natural resources (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 oil and gas. 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, 100th Cong., 2d Sess. 424 (1988).

CONCLUSION

Based solely on the facts presented and representations made, we conclude that income derived by X from the mining, marketing, and transportation of frac sand to oilfield service companies as well as directly to customers engaged in the exploration and production of oil and natural gas for injection as a proppant in the fracturing technique for the production of oil and natural gas constitutes qualifying income within the meaning of § 7704(d)(1)(E).

Except as expressly provided herein, no opinion is expressed or implied concerning the 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 in § 7704(c). To the extent that X's gross income from its activities described above are not attributable to its customer's § 7704(d)(1)(E) activities (i.e., to activities of the customer, such as drilling, exploration and production, transportation, or mining of a mineral or natural resources, that would generally be expected to produce gross income that is qualifying under § 7704(d)(1)(E) regardless of the customer's Federal tax classification), this letter 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) provides that this ruling may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, we are sending copies of this letter to your authorized representatives.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

/s/

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes

cc: