

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number: _____

Refer Reply To:
CC:PSI:B01
PLR-110213-14

Date:
June 29, 2015

Legend

X =

State =

Dear _____ :

This letter responds to a letter dated March 5, 2014, 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 liability company organized under the laws of State and is classified as a partnership for federal tax purposes. X intends to sell interests in X in an initial public offering. After the initial public offering, X will be a “publicly traded partnership” within the meaning of § 7704(b). X expects to earn income that will meet the gross income requirements of § 7704(c) from the transportation, storage, and marketing of fuel.

X primarily sells _____ fuel, _____, to customers who are not end-users, including wholesalers and other fuel distributors and marketers. X also sells _____ fuel to corporate and commercial users pursuant to negotiated contracts resulting from a competitive bidding process in quantities and prices that are not consistent with a retail sales transaction.

Law and Analysis

Section 7704(a), enacted by the Revenue Act of 1987, Pub. Law No. 100-203 (the “1987 Act”), 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) interests in that partnership are readily tradable on a secondary market (or the 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) 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) 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).

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 transportation, storage, and marketing of fuel 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).

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.

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, a copy of this letter is being sent to X's authorized representatives.

Sincerely,

Joy Spies

Joy Spies

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

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes