# IRS Private Letter Rulings on Qualifying Income
# Under I.R.C. 7704

A private letter ruling (PLR) is a letter that is issued by the IRS to a taxpayer in response to the taxpayer's request for clarification of the law as it applies to a specific situation. Managers of PTPs and prospective PTPs often seek PLRs to be sure that their activities will be considered qualifying income under I.R.C. §7704. While a PLR is applicable only to the taxpayer requesting it (whose identity is not released) and cannot be used as precedent, it can be an indication of the IRS' thinking. Below are the PLRs related to qualifying income arranged by date of issue.

## 2017

### PLR 201741001, issued June 29,2017; released October 13 2017. Nitrogen-based fertilizer and real property rents.

PLR 201741001 addresses the status of income from the production, storage, transportation, and marketing of a nitrogen-based fertilizer to both agricultural and non-agricultural customers, as well as income from certain rent payments and other fees arising under a ground lease, including rent payments based on a percentage of the lessee's sales. Specifically, the PLR addresses the status of income to a wholly-owned subsidiary of a parent entity. Interests in the subsidiary may be sold to the public in an initial public offering. The subsidiary will be engaged in the production and marketing of a nitrogen-based fertilizer and will sell that fertilizer in bulk to customers operating in agricultural and non-agricultural industries. The parent represents that all of the nitrogen-based fertilizer to be produced by the subsidiary is marketable as fertilizer for agricultural purposes.

The parent also owns a campus and has entered into a ground lease with a lessee with respect to a portion of the campus. The lessee owns and operates a processing plant on the portion of the campus that it leases from the parent. In addition to the land, the campus has utilities infrastructure for providing electricity, water, and sewage services to the lessee. The parent intends to transfer to the subsidiary the assets currently owned by the parent, including the property leased to lessee, and to assign the lease to the subsidiary. Under the lease, in consideration for the use of, or the right to use, a portion of the campus, the lessee will pay rent equal to the sum of a flat rent amount and two separately calculated percentage rent amounts. The flat rent amount is a fixed dollar amount. The first percentage rent amount will be equal to a set percentage of the lessee's sales of one type of feedstock to the subsidiary. The second percentage rent amount will be equal to a percentage of the lessee's sales of another type of feedstock to the subsidiary. However, in this case, the percentage will be determined based on a formula, under which the percentage will be equal to the difference between an agreed upon market price of the second feedstock and the current price of that second feedstock divided by the market price of the second feedstock. In addition to the flat rent and the percentage rents, the lessee will also pay to the subsidiary a utilities overhead fee and a pollution control fee, which are related to certain electricity, water, and sewage services.

The IRS ruled that the income to be derived by the subsidiary from the production, storage, transportation, and marketing of the nitrogen-based fertilizer to both agricultural and non-agricultural customers is qualifying income for the purposes of section 7704(d)(1)(E). The ruling is only applicable, however, to the extent that the fertilizer products in question are of a grade that is consistent with industry standards for agricultural uses of fertilizer and such products, in the form in which they are sold, are commonly sold and used as fertilizers. Additionally, the ruling does not apply to any retail sales made directly to end users.

The IRS also ruled that the flat rent and percentage rents both constitute rents from real property and that certain portions of the income from the fees as payment for the electricity, water, and sewage services performed under the lease in connection with the rental of real property constitute rents from real property as charges for services customarily furnished or rendered in connection with the rental of real property under section 856(d)(1)(B), without regard to whether such amounts are excluded as impermissible tenant service income under section 856(d)(2)(C). Therefore, the IRS further ruled that the fees constitute qualifying income under section 7704(d)(1)(C) as "real property rents" within the meaning of that section.

### PLR 201736020, issued June 7, 2017; released September 8, 2017. Construction and reimbursement payments.

PLR 201736020 addresses the status of income derived by a partnership from the transportation of crude oil via pipeline, as well as income from certain construction and reimbursement payments associated with the equipment utilized to transport the crude oil. Specifically, the partnership is a publicly traded partnership that owns, operates, develops and acquires pipelines and other midstream assets. Among those assets is an interest in an entity that owns a pipeline. Although certain portions of the PLR (which may include facts relevant to the section 7704(d)(1)(E) analysis) have been redacted in the public version of the PLR, a summary of the activities is included below.

Pursuant to three separate agreements, the entity transports the crude oil production of certain producers from the producers' oil and gas leases to certain designated delivery points. The oil is first transported by the entity on its lateral pipeline that runs from one of the producers' facilities to a tie-in to a pipeline located at a second facility of the producers. The oil is then transported on the pipeline. The entity is responsible for operating both the lateral and the pipeline through its contracted operator. The entity also leases space from the producers at the second facility for a pump station and other pipeline assets.

The agreements provide for a transportation fee based on the barrels of oil transported, however, transportation on the lateral is charged a separate fee from that charged for transportation on the pipeline. The entity has the right in certain cases to impose a repair surcharge to cover repairs on the lateral and the pipeline. Persons other than the producers may be the shippers of record if they purchase the crude oil from the producers prior to its transportation on the lateral and the pipeline. In such cases, those shippers are responsible for the transportation fee provided for in the agreements.

If one of the agreements had been terminated prior to first oil because the producers elected to not complete construction of one of their facilities, the producers would have been liable to the entity for certain costs expended with respect to the construction of the lateral, plus a service charge. The producers are also responsible for reimbursing the entity for costs associated with certain direct and indirect costs associated with design, engineering, construction, installation, maintenance, repair, replacement and abandonment of certain equipment located at or in the vicinity of one of the producers' facility. These costs are reimbursed on a cost plus basis.

The IRS ruled that the gross income derived by the partnership from the agreements (as that income is described in the PLR) is qualifying income under section 7704(d)(1)(E).

### PLR 201732006, issued May 16, 2017; released August 11, 2017. Fluids handling.

PLR 201732006 is another in a series of PLRs regarding the provision of fluid handling services by MLPs to oil and natural gas producers. In this case, a partnership, which intends to be a publicly traded partnership, will provide a broad range of services to producers engaged in the exploration, development and production of oil and natural gas. These services will include the delivery, handling, treatment, recycling and disposal of petroleum-water mix produced as part of the oil and gas production process (Petroleum-Water Mix Services), and the transportation and storage of fluids used in drilling and completing wells (Fresh Water Distribution Services). The partnership will provide these services through affiliated entities using either employees of the partnership or other contracted third parties.

As part of the Petroleum-Water Mix Services, the partnership will collect and transport the petroleum-water mix to the partnership's central processing facility for processing and storage before the petroleum-water mix is either delivered to third parties for further treatment and recycling before its reuse in drilling operations or disposed of in underground formations. In some areas, the partnership may collect and transport the petroleum-water mix directly to a salt water disposal well via truck or pipeline. In other areas, the partnership may instead collect and transport the petroleum-water mix to mobile on-site recycling skids via temporary pipelines for processing to meet specific water quality specifications. The partnership will dispose of collected solids at a solid waste facility. Treated water will be returned to producer-owned tanks at the production site for reuse. The partnership will receive a variable service fee for its Petroleum-Water Mix Services based on the volume of the petroleum-water mix received.

As part of the Fresh Water Distribution Services, the partnership will provide fresh water to producers in the same geographic area as its Petroleum-Water Mix Services. The partnership will receive a monthly fee for each month that it provides the Fresh Water Distribution Services.

Consistent with recent PLRs regarding fluid handling, the partnership has made representations that the services require equipment that is dedicated exclusively to use in oil and gas exploration and production, that the partnership's personnel have specialized knowledge, training and experience, that the services will be provided on an ongoing basis, that the fracturing operations would not be commercially viable without the services and that the services are provided exclusively to those engaged in qualifying activities.

The IRS ruled that the partnership's income from its Petroleum-Water Mix Services and Fresh Water Distribution Services will constitute qualifying income within the meaning of § 7704(d)(1)(E). The ruling does not apply to any income derived from the delivery and transfer of fluids, including recycled produced water, where the partnership does not also collect and clean, recycle or otherwise dispose of produced water and drilling production waste after use within the same geographic area.

**PLR 201728021, issued April 17, 2017; released July 14, 2017. Natural gas processing**.

PLR 201728021 addresses the status of income derived by an existing MLP from its ownership of a natural gas processing plant that receives fees for its natural gas processing services. Specifically, a publicly traded partnership entered into two agreements related to its indirectly wholly owned natural gas processing plant (the "Plant"). The Plant uses cryogenic expansion to extract NGLs from natural gas.

Under the first arm's length agreement, the Plant is operated and maintained by an operator (the "Operator") on behalf of the partnership. The Operator is a minority partner in the partnership and is the indirect 100 percent owner of a natural gas supplier (the "Supplier"). Under the second arm's length agreement (the "Agreement"), the Plant receives raw natural gas from the Supplier and processes it to remove the NGLs to meet interstate pipeline gas quality specifications. The Supplier retains legal title to the natural gas delivered to the Plant at all times and to the volumes of extracted residue gas and NGLs at the outlet of the facilities. Pursuant to the Agreement, the Supplier subscribes 100 percent of the available natural gas processing capacity of the Plant. The Supplier pays the partnership a processing fee that is composed of both a fixed monthly demand charge (calculated based on the Plant's capacity to process the natural gas) and a variable service fee (calculated based on the volume of natural gas that the Plant processes).

The IRS ruled that the income derived by the partnership from the processing of natural gas under the Agreement is qualifying income within the meaning of § 7704(d)(1)(E).

**PLR 201724024, issued March 9, 2017; released June 16, 2017. Construction of interconnects.**

PLR 201724024 addresses the status of income derived from the construction and expansion of oil and natural gas transportation systems and processing facilities, as well as income from the receipt of management fees and reimbursement payments for the operation of such assets owned by third parties or through joint ventures. Specifically, the PLR addresses the status of income to an existing MLP from the construction of interconnect points with its transportation and gathering systems, and the development of new or modification of existing transportation and processing facilities. The payments received by the partnership under such arrangements compensate the partnership for the design, materials, construction or assembly of the assets, as well as the inspection and oversight of work performed by third parties. Although the partnership is generally responsible for constructing these assets, the partnership typically engages a third party to perform the construction work. While the partnership may be compensated on a fixed cost basis, reimbursement basis or cost plus basis, the partnership may also recoup the cost of construction through minimum volume commitments from customers.

The partnership also earns income from the receipt of management fees and reimbursement income for operating transportation or processing assets owned by third parties or through joint ventures to which the partnership is a party. In these situations, the partnership performs all of the activities necessary for the functioning of the assets, including the employment of personnel who physically control the assets and perform maintenance.

The IRS ruled that gross income derived by the partnership from the construction of interconnect points with its transportation systems and from expanding transportation assets and processing facilities for natural gas, NGLs and crude oil for use in the partnership's performance of qualifying activities constitutes qualifying income under I.R.C. § 7704(d)(1)(E). The IRS also ruled that the income derived by the partnership from the receipt of management fees and reimbursement income for operating transportation or processing assets owned by third parties, or through joint ventures to which the partnership is a party constitutes qualifying income.

**PLR 201723004, issued January 25, 2017, released June 9, 2017. Fluid handling services.**

PRL201723004 is another in a series of PLRs dealing with MLPs regarding fluid handling services to oil and natural gas producers. However, it is the first such PLR released following the issuance of the final regulations under I.R.C. § 7704. In this case, the PLR addresses the status of income to an existing MLP from fluid management, inter-well transfer, disposal, and hydrocarbon remediation services. As part of its fluid management services, the partnership will supply and transport drilling and fracturing fluids, including fresh water, brine, and other injectants, for use in drilling and hydraulic fracturing to producers via temporary and permanent pipelines, but may also utilize third-party trucking services. With respect to its freshwater services, the partnership will remove freshwater from its sources and transfer the water to above-ground storage tanks or to storage ponds, which will be monitored by the partnership. The partnership will also provide certain inter-well site transportation via pipelines.

In connection with its disposal services, the partnership will treat and dispose of flowback, produced water, and other drilling production wastes, generally by using dedicated pipelines or trucks to transport flowback and produced water to the partnership's salt water disposal wells. The partnership may treat recycled fluids so that such fluids can be used in future drilling and fracturing operations. The partnership will also provide hydrocarbon remediation services. As a part of these remediation services, the partnership will remove hydrocarbons from the drilling waste at its facilities during the waste treatment and disposal process and sell such reclaimed hydrocarbons.

Consistent with recent PLRs regarding fluid handling, the taxpayer has made representations regarding specialized personnel, that the services are essential to the completion of oil and natural gas drilling and fracturing operations, that the processing, treatment, and disposal of flowback and produced water is required by government regulations and industry standards, that the services will require daily involvement and will be performed on an ongoing basis, and that the partnership's disposal facilities will be staffed and equipped to allow for remote monitoring.

The IRS ruled that the partnership's income from its fluid management, inter-well transfer, and disposal services will be qualifying income under I.R.C. § 7704(d)(1)(E), as will its income from hydrocarbon remediation services performed as part of the disposal process, so long as the partnership does not sell recovered hydrocarbons to end users at the retail level. The ruling does not apply to any income from the delivery and transfer of water, brine, or other injectants, including recycled produced water, where the partnership does not also collect and clean, recycle, or otherwise dispose of produced water and drilling production waste after use.

**PLR 201722023, issued February 28, 2017; released June 2, 2017. Processing Timber into Pellets and Chips**.

This PLR addresses the status of income from the processing, transportation, storage, and marketing of wood pellets and wood chips. Specifically, a corporation intends to form a publicly traded partnership to conduct some or all of the corporation's current wood pellet and wood chipping business. Currently, the corporation acquires timber feedstock, including raw logs, mill chips, roundwood chips, bole chips, and sawdust, which it dries, screens, and reduces in size. The corporation then combines the dried particles with kiln-dried residue and sends the resulting feedstock through a pellet mill. The pellet mill forces the feedstock through holes under pressure, which raises the temperature of the feedstock to bind the particles without the addition of binding agents. Then, the corporation cuts the pellets to size, stores them in silos, and loads them for bulk sales or sales to third-party retailers.

Additionally, the corporation operates timber processing mills, in which it (1) debarks and chips logs; (2) screens the resulting chips for size and re-chips if necessary; (3) stacks the chips for storage, loads them onto trucks or train cars for immediate delivery, or directly conveys the chips to a customer's facility; (4) separates and sends bark for separate processing; and (5) screens bark and distributes it to the customer. At some mills, the corporation provides only operating services. At other mills, the corporation finances, constructs, maintains, and operates the mill. The corporation generally charges a per-ton fee for its processing services, but may also charge a per-hour fee and a per-month supervisory fee. Additionally, the corporation may charge a fee for reimbursement of its construction costs plus a reasonable rate of return.

On these facts, the IRS ruled that the partnership's income derived from the processing, transportation, storage, and marketing of wood pellets and wood chips will constitute qualifying income under I.R.C. § 7704(d)(1). Additionally, the ruling specifies that it does not apply to retail sales made directly to end users.

**PLR 201721007, issued February 23, 2017; released May 26, 2017. Termination Income.**

This PLR addresses the status of payments received in exchange for early termination of certain processing, refining, and transportation agreements. Specifically, a publicly traded partnership entered into agreements (the "Agreements") with a single customer to process crude oil condensate and provide pipeline transportation services between the partnership's terminal and the customer's terminal. Under the Agreements, the partnership agreed to construct certain assets (the "Assets"), including a splitter, storage capacity, and pipelines, which the partnership will own, operate, and maintain after they are placed in service. The partnership will earn (1) a monthly tolling fee based on the volume of condensate processed, (2) miscellaneous terminalling service fees based on the volume of product handled and stored, and (3) a monthly tariff fee based on the volume of product transported through the pipelines.

Additionally, the customer may terminate the Agreements at will prior to the date the Assets are placed in service. If the customer exercises its early termination right, the customer will reimburse the partnership for capital expenditures incurred to construct the Assets and costs incurred in connection with the termination, and pay an accelerated tolling fee and accelerated tariff fee. In the event of early termination, the partnership will retain possession and ownership of the construction in process.

On these facts, the IRS ruled that the partnership's income from the early termination payments will constitute qualifying income under I.R.C. § 7704(d)(1). The PLR discusses reimbursement of costs under Treas. Reg. § 1.7704-4(c)(10)(i), but includes no analysis to support treating the accelerated tolling and tariff fees as qualifying income.

## 2016

**PLR 201637007, issued June 13, 2016; released September 9, 2016. Fluids, Solids, and Oilfield Waste Services.**

This PLR is quite similar to others dealing with oilfield services. The taxpayer is a PTP which is engaged in certain midstream operations. As a part of that business, the PTP provides fluid, solids, and oilfield waste handling, treatment, and disposal services to customers engaged in the exploration for, and development and production of, oil and natural gas. It supplies and transports drilling and fracturing fluids via trucks, tanks, and for some freshwater, pumps and pipelines. It also treats, recycles, and disposes of drilling and production wastes and provides truck and tank washout services, and recycling or disposal services related to the resulting fluids. It also earns income through the provision of frac tanks for temporary storage of water, flowback, produced water, pit water, drill cuttings, and other drilling and production wastes; and it provides hydrocarbon remediation services, removing hydrocarbons from the drilling waste at its facilities during the waste treatment and disposal process and sells such reclaimed hydrocarbons.

The PTP makes the common representations regarding its personnel's specialized knowledge, training, and experience; the essential nature of its services to oil and gas drilling and fracking operations; that the processing and treatment of fluids is necessary to comply with government regulations and industry standards; and the continuous, daily involvement of its personnel throughout the cycle of each producing property.

The IRS ruled that the PTP's income from its fluid management, transportation, disposal, washout, and storage services is qualifying income under section 7704(d)(1)(E), as is the income from its hydrocarbon remediation services performed as part of the disposal process so long as the PTP does not sell the recovered hydrocarbons to end users at the retail level. The ruling is not applicable to any income from the delivery and transportation of water, brine, or other injectants where the PTP does not also collect and clean, recycle, or otherwise dispose of the resulting produced water and drilling production waste after use.

**PLR 201636039, issued June 8, 2016; released September 2, 2016. Interest Rate Swaps and Other Financial Transactions.**

The taxpayer is a PTP with two primary business segments: (i) pipelines and transportation; and (ii) wholesale marketing and terminalling. In order to finance asset acquisitions and conduct its business operations, the PTP periodically issues both fixed-rate and floating-rate debt securities. To manage its exposure to interest rate movements, the PTP enters into interest rate swaps, interest rate caps, forward locks, and treasury locks (together, the "Financial Transactions"). In some cases, the Financial Transactions entered into by the PTP are integrated with the related debt instruments under § 1.1275-6 of the Income Tax Regulations. The PTP requested a ruling only on Financial Transactions that are not integrated. The IRS ruled that the income Company from each of the four types of Financial Transactions is qualifying income within the meaning of section 7704(d)(1) of the Code and section 1.7704-3(a)(1) of the Regulations. The IRS cautioned that apart from that specific ruling, it did not express or imply any opinion concerning the federal tax consequences of the Financial Transactions under any other provision of the Code.

### PLR 201636025, issued May 26, 2016; released September 2, 2016. Regasification of LNG.

A PTP owns indirectly all of the outstanding equity interests in a limited partnership (LP) that is treated as a disregarded entity for tax purposes. LP owns and operates a liquefied natural gas receiving and regasification terminal. It has a processing agreement with two suppliers under which it receives LNG and processes it into gas for future transport. During this process the suppliers retain ownership of the LNG, while LP possession and control from its receipt until it is delivered to the suppliers' delivery point. The suppliers pay a fixed monthly capacity fee for these services, for which they subscribe to a percentage of the terminal's capacity. The IRS ruled that the income derived from the processing agreement is qualifying income under section 7704(d)(1)(E).

### PLR 201633020, issued April 8, 2016; released August 12, 2016. Fluid Management and Disposal Services.

This is another in the series of PLRs dealing with MLPs wishing to provide fluid handling services to oil and natural gas producers. In this case a partnership in formation will, after its IPO, supply drilling and fracturing fluids, including fresh water, brine, drilling mud, lubricants, and other injectants for use in drilling and hydraulic fracturing. The drilling mud will be recycled or produced from by-products of the partnership's disposal services and the remaining products sourced from third parties. The fluids will be transported to the well site by third party trucks or pipeline. The partnership's personnel will be at the well site on a regular basis to work with production teams to coordinate deliveries and will remotely monitor fluid levels to ensure a continuous supply of fluids. The partnership will also store, treat, and dispose of flowback produced water and other drilling production waste, generally using salt water disposal wells. Flowback and produced water will typically be transported to the wells by third party truck or pipelines; however, the partnership anticipates building its own pipelines.

In connection with its disposal services, the partnership will provide truck and tank washout services. It will also earn income from selling hydrocarbons and other minerals and natural resources that are collected as part of the disposal process. As in other similar cases, the taxpayer has made representations regarding specialized personnel, lack of utility for the equipment and personnel training outside oil and gas exploration, that the processing and treatment of flowback fluids and produced water is required by government regulations and industry standards, and that production of oil and gas via fracking would not be possible without these services.

The IRS ruled that the partnership's income from its fluid management and disposal services will be qualifying income under 7704(d)(1)(E), as will its income from sales of filtered hydrocarbons and other minerals collected as part of the disposal process as long as the sales are not to end users at the retail level. The ruling does not apply to any income from the delivery of water or other injectants, including recycled produced water, to affiliates or third parties where the partnership does not also collect and clean, recycle, or otherwise dispose of the resulting produced water and drilling production waste after use.

### PLR 201619002, issued February 8, 2016; released May 6, 2016. Nitrogen-based fertilizers.

A corporation plans to form a publicly traded partnership (PTP). The partnership will be engaged in the production, storage, transportation, and marketing of nitrogen-based fertilizers: ammonia, ammonium nitrate, ammonium nitrate-ammonia (ANA), urea (both granulated and in solution), and urea ammonium nitrate (UAN). The taxpayer represented that these products are all direct application fertilizers, and that they will be sold in bulk to customers operating in agricultural and non-agricultural industries. The IRS ruled that the income from the foregoing activities will be qualifying income under § 7704(d)(1)(E). This would be true, however, only to the extent that 1) the products in question are of a grade that is consistent with industry standards for agricultural uses as a fertilizer, 2) the product in the form sold is commonly sold and used as a fertilizer (for example, low density ammonium nitrate or ammonium nitrate solution would not qualify), and 3) the partnership does not make direct retail sales to end users.

### PLR 201614004, issued December 10, 2015; released April 1, 2016. Transportation, parking, and hedging income.

The taxpayer is an MLP which provides pipeline gathering and transportation of crude oil, natural gas, and products thereof. Its transportation income includes income from construction, maintenance and operation of lateral pipelines and new points of connection to its pipeline system. The MLP also derives income from the transportation of "produced water" from crude oil and natural gas wells of its gathering system clients. It intends in the future to expand its water transportation services to include produced water transportation services to non-gathering clients, transportation of produced water that is not naturally occurring but is water flooded into a well to stimulate production, and transportation of produced water by truck rather than pipeline. It also intends to deliver fresh water, chemicals and other solutions to well sites for use in fracturing. The MLP will also collect, clean, recycle and otherwise dispose of the delivered water in accordance with federal, state or local regulations concerning waste products. Its employees will receive specialized training for the provision of these services and will provide services on an ongoing and frequent basis.

The MLP also derives income from parking agreement. in which its customers are charged a usage fee based on the quantities of natural gas stored ("parked") at its facilities. Parking consists of (i) the receipt of gas for the customer's accounts, (ii) the retention of the gas, and (iii) the subsequent removal of the gas for the customer's account at the agreed upon time. These include cycling agreements, i.e., parking agreements with an upper limit on the amount of gas that can be parked in a given period. Finally, in connection with the debt obtained to finance its activities, the MLP enters into hedging agreements including interest rate swaps, interest rate caps, and Treasury locks. It is specified that a ruling is sought only for those financial transactions that are not integrated with the related debt instruments.

The IRS ruled that the income from the following activities is qualifying income under § 7704(d)(1)(E): 1) transportation of crude oil and natural gas pursuant to agreements described in the ruling; 2) natural gas parking activities including income from parking and cycling agreements to the extent parking income is separated from loaning income; 3) interconnect activities enabling the customer's product to enter the MLP's pipeline system; and 4) transportation of produced water; and delivery of fresh water and injectants where the MLP will also collect, clean, recycle and dispose of the water. It also found the income from the PTP's hedging agreements to be qualifying income

**PLR 201611017, issued December 2, 2015; released March 11, 2016. Freshwater distribution, fluid handling and disposal, pressure pumping services.**

An independent oil and gas company proposes to drop several midstream activities which it conducts through subsidiaries into an MLP. In addition to oil gathering and gas gathering and processing, these activities include the construction and operation of freshwater distribution pipeline systems and saltwater disposal systems. The MLP will provide fluid delivery, handling, treatment, processing, recycling and disposal services to oil and gas producers. It will also provide freshwater distribution to exploration and production operators through pipelines between freshwater delivery points and oil and gas producing wells and future drill sites. Pipelines may also deliver water into storage ponds operated by the MLP. The MLP will also transport by pipeline or tank truck, store, process, treat, and dispose of waste fluids. Finally, the MLP will provide pressure pumping services to oil and gas producers and may provide production support services for wells at which a third party is providing the pressure pumping services.

As with the other PLRs in this area, the taxpayer has made several representations aimed at meeting the requirements of the proposed qualifying income regulations, namely that: 1) the services provided by the MLP will require substantial assets and equipment that are dedicated exclusively to use in the exploration and production of oil and gas and have limited utility outside of those areas; 2) the services provided will require personnel with specialized knowledge, training, and experience; and 3) the production of oil and gas using fracking would not be commercially viable without fluid handling services; 5) for each well where the MLP provides freshwater sourcing and distribution as a qualifying activity, it will also provide produced water transportation and recycling or disposal activities; and 6) for each well where the MLP provides production support services where a third party is providing pressure pumping services, it will also provide produced water transportation and recycling or disposal activities.

The IRS ruled that the MLP's income from freshwater sourcing and distribution services; produced water transportation, recycling, and disposal services; marketing of skim oil and other recoverable minerals other than to end users at the retail level; pressure pumping services; and production support services as described by the taxpayer constitute qualifying income under § 7704(d)(1)(E). The ruling does not apply to any income from the delivery of water or other injectants, including recycled produced water, to affiliates or third parties where the MLP does not also collect and clean, recycle, or otherwise dispose of the resulting produced water after use.

### PLR 201608011, released February 18, 2016. Fluid handling and disposal.

This is another in the series of recent PLRs dealing with provision of fluid handling and disposal services to oil and gas producers. The taxpayer is forming a prospective PTP which will provide fluids hauling, management, and disposal services for both fresh water and brine. In addition to the fluids management services, the PTP will design, construct, and operate a number of brine stations, where it will produce brine by pumping fresh water into salt caverns and either sell it onsite or transport it to an oil and gas producer's site. It will also design, construct, and operate saltwater disposal wells and transfer flowback fluids and produced water from drilling operations to the wells by truck and pipeline for disposal. It will earn income from contracts with producers to transport fixed amounts of waste to its wells, from providing disposal services to other producers when it has excess well capacity, and from selling the filtered hydrocarbons collected as part of the disposal process.

The taxpayer has made several representations that conform with the intrinsic activities requirements of the proposed regulations under § 7704, including that it will provide personnel with specialized training, tools, and equipment who will oversee operations on a daily basis, that the training and equipment have no utility outside of oil and gas exploration, that production of oil and gas by hydraulic fracturing would not be viable without the services provided, and that processing and disposal of flowback fluids and produced water is required prior to injection in a disposal well to comply with governmental regulations and industry standards.

The IRS ruled that the PTP's gross income from its fluid management and disposal services will be qualifying income under § 7704(d)(1)(E). Income from selling the filtered hydrocarbons collected as part of the disposal process will also be qualifying income as long as the sales are not to end users at the retail level. The IRS specified that the ruling will not apply to any income from the delivery of freshwater or chemicals where the PTP does not also collect and clean, recycle, or otherwise dispose of the delivered water or other chemicals after use.

**PLR 201602004, issued September 25, 2015; released January 8, 2016. Fluid services; fluid, solid, and oilfield waste handling, treatment, disposal, and recycling.**

This is another PLR dealing with oilfield services related to fracking. A prospective MLP (currently a non-traded partnership) plans to provide a full suite of fluid, solid, and oilfield waste handling, treatment, and disposal services to oil and natural gas producers engaged in the exploration, development, and production of oil and gas. The services will include provision of fresh water, some of which will come from natural runoff and recycled water, and brine produced by injecting water into a salt cavern and retrieving the fully saturated brine that is returned through the cavern wellbore (and possibly recycled brine). It will also furnish drilling mud and casing cement. The water and other fluids would be transported by trucks, tanks, and pipelines owned and operated by the partnership. Pipelines will be used to transfer fluids between tanks at a well site and between sites at a property.

The partnership will also process, treat, dispose of, and recycle waste solids and waste fluids. It will earn income from marketing hydrocarbons recovered during the waste fluid treatment and disposal process. It intends to sell these reclaimed hydrocarbons in relevant markets other than to end users at the retail level. The partnership expects to earn income from washing out trucks, containment bins, tanks and other equipment used in the oil and natural gas extraction and production process. In addition, in conjunction with its recycling, disposal, and washout activities the partnership will earn income from recycling drilling mud.

For all these activities the partnership's employees will be present to monitor and oversee, and in some cases to operate and maintain, the various processes. The taxpayer represents that 1) the services provided by the partnership will require substantial assets and equipment that are dedicated exclusively to use in the exploration and production of oil and gas and have limited utility outside of those areas; 2) the services provided will require personnel with specialized knowledge, training, and experience; and 3) the production of oil and gas using fracking would not be commercially viable without fluid handling services.

The IRS ruled that the partnership's income from the delivery of fluids, provision of inter-well water transfer services, and the processing, treatment and disposal of waste solids and waste fluids, including washout services, will be qualifying income under § 7704(d)(1)(E). The partnership's income from the recovery, recycling, and marketing of brine, chemicals, and drilling mud to oil and gas producers and of hydrocarbons other than to end users at the retail level will also constitute qualifying income under § 7704(d)(1)(E). The IRS specified that the ruling is not applicable to any income derived from the delivery of water, brine, drilling mud, or other materials to affiliates or third parties where the partnership does not also collect and clean, recycle, or otherwise dispose of the delivered materials after use.

Interestingly, part of the rationale for the ruling was the fact that the process by which brine was produced is considered an extraction process and thus an allowable mining process.

## 2015

### PLR 201549013, issued August 19, 2015; released November 27, 2015. Ground Leases of Real Property.

The taxpayer is an MLP which derives its income from leasing raw land and building rooftops. Under a typical arrangement, the owners of these sites enter into a ground lease with third-party tenants. The tenants will construct, own, and maintain cell towers, rooftop wireless and broadband internet installations, billboards, wind turbines, and solar arrays on the sites. During the term of the ground lease, the owner will sell all its rights and interests in the ground lease to the MLP, or to another party from whom the MLP later acquires them. The MLP represents that at least 85% of the income from each ground lease is from either land or a structure that is permanently affixed to the ground, not intended to be moved, and subject to damage if moved. The rents are generally fixed, but for billboards are calculated as a percentage of the tenant's gross revenue or receipts from the billboard reduced by certain expenses. The MLP also represents that the rents will be paid for the right to use the sites and that tenants will not be related to the MLP, will operate the new construction, and will be responsible for maintaining the property on the site. The MLP will provide only those services that are customarily furnished in connection with the rental of the specific type of property in its geographic area. The IRS ruled that income earned from the ground leases qualified as "rents from real property" under section 856(d), as modified by section 7704(d)(3), and therefore, constituted qualifying income within the meaning of section 7704(d)(1)(C).

### PLR 201549004, issued May 26, 2015; released November 27, 2015. Fracking Services.

A corporation engaged in exploration, development, an acquisition of natural gas, NGL, and oil properties formed an MLP and transferred some of its assets to it. The corporation also gave the MLP an option to purchase its E&P services business. The MLP wished to exercise the option. While several specifics are redacted, it is clear that the services business provides a full suite of services to the corporation in all phases of exploration and production, and that the services relate to fracking. The services include installing equipment and other infrastructure and providing personnel to monitor and adjust the equipment's operation. The taxpayer provides the three representations necessary under the "intrinsic activities" test in the proposed regulations: 1) the services provided require substantial assets and equipment that are dedicated exclusively to use in the exploration and production of oil and gas; 2) the production of oil and gas by fracking would not be commercially viable without these services; and 3) all services from design to operation, as well as oversight of day to day operations, are provided by persons with a specialized knowledge base, training, and experience. The IRS ruled that the MLP's income from the provision of these services would be qualifying income under section 7704(d)(1)(E).

**PLR 201548013, issued August 5, 2015; released November 7, 2015. Oilfield Services.**

The taxpayer intended to form a publicly traded partnership which would provide a full suite of fluid handling, treatment, processing and disposal services throughout the exploration, development, and production process of oil and natural gas. These included provision and handling of water and other fluids; transportation of water between sites; hot oiler and superheater services; condensate vapor control and battery vapor services; processing, treating, and disposing of waste solids and waste fluids; washing out trucks, containment bins, tanks and other equipment used in the oil and natural gas extraction and production process; cleaning and decontamination services for drilling pipelines; slurry injection activities in order to refill well sites; and marketing of hydrocarbons recovered during the waste fluid treatment and disposal process (other than to end users at the retail level). The taxpayer made the representations necessary to meet the "intrinsic activity" test of the proposed regulations, including the use of specialized assets and equipment, the necessity of personnel with specialized knowledge and experience to perform the services, and the necessity of the fluid handling services for commercial viability of oil and natural gas production.

The IRS ruled that income from the taxpayer's services as described below would be qualifying income under section 7704(d)(1)(E):

- The delivery of fluids, provision of inter-well water transfer services, and the processing, treatment and disposal of waste solids and waste.
- The provision of hot oiler and superheater services, slurry injection activities, drilling pipe decontamination, washout services and condensate and battery vapor control services during the exploration and production of oil and natural gas.
- The recovery and marketing of hydrocarbons other than to end users at the retail level.

The IRS specified that the ruling was not applicable to any income derived from the delivery of water to affiliates or third parties where the PTP did not also collect and clean, recycle, or otherwise dispose of the delivered water after use.

**PLR 201545020, issued August 5, 2015; released November 6, 2015. Fluid Services.**

A PTP intended to exercise its right of first offer to purchase its corporate sponsor's water-related assets and associated fluid services business. The business pumps water from local rivers, streams, and other sources and transports it through pipelines, storage facilities, and pumping stations to oil and gas production sites for use in fracking operations. It also transports, stores, processes, treats, and disposes of waste fluids associated with fracking.

The taxpayer represented that (as required by the "intrinsic activities" language in § 1.7704-4(d) of the proposed regulations under section 7704): 1) the services provided require substantial assets and equipment that are dedicated exclusively to oil and gas exploration and production; 2) the services require personnel with specialized knowledge, training, and experience; and 3) the production of oil and gas by fracking would not be commercially viable without the fluids handling services.

The IRS ruled that the delivery of water and the collection, treatment, and transport of flowback, produced water, and other fluids would constitute qualifying income under section 7704(d)(1)(E). It added, however, that the ruling is not applicable to any income derived by the PTP from the delivery of water, including recycled produced water, to affiliates or third parties where the PTP did not also collect and clean, recycle, or otherwise dispose of the delivered water after use.

**PLR 201541008, issued June 29, 2015; released October 9, 2015. Fuel Sales.**

Holds that a prospective PTP's income from the transportation, storage, and marketing of fuel (additional details about this have been redacted) will be qualifying income. The prospective PTP primarily sells fuel to customers who are not end-users, including wholesalers and other fuel distributors and marketers. It also sells fuel to corporate and commercial users to negotiated contracts resulting from a competitive bidding process in quantities and prices that are not consistent with a retail sales transaction.

**PLR 201538012, issued May 19, 2015; released September 18, 2015. Storage, Transportation, and Marketing.**

The information in this PLR is heavily redacted, but the ruling is that income from a prospective PTP's storage services to third party customers, pipeline transportation services, and marketing, including revenue from various sales and services agreements, will be qualifying income.

**PLR 201537014, issued May 29, 2015; released September 11, 2015. Water Services.**

A prospective PTP plans to earn income primarily by assessing fees for gathering, transporting, processing, treating and disposing of saltwater produced in the exploration and production of oil and natural gas. Its assets will include ownership interests in saltwater disposal wells and associated assets including pipelines, rights of way, and equipment to operate the disposal wells. As a complement to the primary business, the PTP will remove skim oil from drilling waste during the disposal process and market it to relevant, non-end user markets. The prospective PTP represented that the personnel providing the services receive unique training, the saltwater disposal system does not have commercially viable uses, the processing and treatment are required by government regulations and industry standards, the personnel provide onsite services on a daily basis, and offsite monitoring services are performed on an ongoing basis for the exclusive use of the disposal system. Based on these facts and representations, the IRS ruled that the PTP's income from providing the processing, treatment, and disposal services, as well as its income from marketing skim oil, would be qualifying income under section 7704(d)(1)(E).

**PLR 201537007, issued May 26, 2015; released September 11, 2015. Liquefaction of natural gas and regasification of LNG.**

A prospective PTP owns an interest in entity Y, whose subsidiary entity A owns an LNG receiving and regasification terminal. Another subsidiary of Y's, entity B, plans to construct and own liquefaction facilities at the terminal that will allow it to process and convert natural gas into LNG. A has a series of regasification agreements with company C under which it is committed to receive a specified amount of C's LNG via tankers, store it in LNG tanks at the terminal, process the LNG into natural gas, and deliver the natural gas to C. A bears the risk of loss from the time the LNG is received at the terminal until the natural gas is delivered. Once B has constructed its liquefaction facilities, it plans to enter into a similar liquefaction agreement with C. It is expected that the liquefaction terminal would ultimately have several customers. The IRS ruled that income derived by the prospective PTP, directly or indirectly, from contracts for the processing, regasification, liquefaction, and storage of natural gas would be qualifying income under section 7704(d)(1)(E).

**PLR 201523018, issued January 29, 2015; released June 5, 2015. Income from Interest rate swaps, interest rate caps, and treasury locks.**

The taxpayer requesting the ruling is a PTP which periodically issues both fixed-rate and floating-rate debt securities in order to finance asset acquisitions and conduct its business operations. The PTP uses standard interest rate swaps, forward start interest rate swaps, interest rate caps, and treasury locks to manage its exposure to the market reference rate on its debt, which affects the interest it must pay on the debt securities. The IRS ruled that the PTP's income from each of the four types of financial transactions ws qualifying income.

Under existing regulations (Reg. Section 1.7704-3(a)(1)), qualifying income includes income from notional principal contracts and other substantially similar income from ordinary and routine investments to the extent determined by the IRS. Income from a notional principal contract is included in qualifying income only if the property, income, or cash flow that measures the amounts to which the partnership is entitled under the contract would give rise to qualifying income if held or received directly by the partnership. In this case, the standard interest rate swap and interest rate cap are specifically included in the definition of notional principal contract and would generate qualifying income if held directly by the PTP.

The forward-start interest rate swaps and the treasury locks are specifically listed in the definition of a notional principal contract, but, the IRS decided they are both ordinary and routine transactions and, in this case, were entered into for the same purpose as a notional principal contract, that is to lock in an interest rate or manage the risk of interest rate movements on Company's borrowing. Because they are substantially similar to notional principal contracts they may also constitute qualifying income,

## 2014

### PLR 201451002, issued September 8, 2014; released December 19, 2014. Oil and gas gathering, processing, transportation and terminaling.

This PLR was issued to a limited partnership which planned to become publicly traded. The partnership owned oil and gas gathering systems and subsystems, a gas fractionation and processing plant, a truck terminal and a rail terminal, and rail tank cars specially designed to haul crude oil. It planned to use the assets to earn income under four agreements. These are described in detail in the PLR; but in quick summary:

- Agreement A: Gather and transport crude oil, including operation and maintenance of the gathering systems.
- Agreement B: Gather and transport untreated natural gas, , including operation and maintenance of the gathering systems.
- Agreement C: Provide gas processing services, deliver methane into interstate pipelines, and deliver NGLs to interstate pipelines and a rail terminal. Included are operation and maintenance of the processing plant, scheduling of gas deliveries, and storage of NGLs.
- Agreement D: Terminal and transport crude oil and NGLs for a per-barrel fee. Services included receiving crude oil from pipeline gathering systems, unloading trucks, storing crude oil in storage tanks, loading crude oil and NGLs onto railcars, storing propane in an underground storage cavern, and delivering crude oil through pipelines.

The IRS ruled that the partnership's income from the agreements as described in the PLR would be qualifying income under section 7704(d)(1)(E).

### PLR 201448019, issued May 22, 2014; released November 28, 2014. Processing Iron Ore.

A publicly traded partnership requested a ruling regarding income from activities related to iron ore and products derived from the ore. The nature of the activities has been redacted, but the ruling refers to the beneficiation and pelletizing processes used to process lower grade iron ores, which were the subject of PLR 201351009. Processing iron oxide in this manner into direct reduced iron creates a suitable feedstock for steel manufacturing, with byproducts including carbon dioxide, water, and others which have been redacted The ruling mentions the possible purchase of feedstocks from third parties and sale of a product in bulk quantities (but not to end users at the retail level); again, details are redacted. The IRS ruled that the PTP's income from its refining and processing activities and from the sale of direct reduced iron products as described would be qualifying income under section 7704(d)(1)(E).

### PLR 201420012, issued August 30, 2013; released May 16, 2014. Oilfield Services.

The taxpayer requesting the ruling has formed a limited partnership which it plans to take public. The new PTP will engage in oilfield services activities. The specific services have been redacted, but the PLR mentions services necessary for the production of oil and gas and the need for experienced personnel at the site to ensure safe, efficient and effective exploration and production. It is stated that the PTP will derive income from providing supervisory, specialist and management functions at the well-site, and that it will provide certain technical services and tasks. The IRS ruled that the PTP's income from providing the readacted services will be qualifying income under section 7704(d)(1)(E)--but in the case where the PTP does something which unfortunately has been reacted, the income will not be qualifying income.

**PLR 201418021, issued October 25, 2013; released May 2, 2014. Coal Mining and Energy Infrastructure Services.**

This ruling concerns a PTP whose activities focus on coal, oil, natural gas, and related energy infrastructure. The PTP manages and has an ownership interest in a joint venture which mines coal and producing premium metallurgical coal. The PTP oversees the day to day operations of the joint venture, and its services include engineering, mine planning, personnel management, asset procurement and maintenance, and financial management and controls, as well as any other services that may be needed. In return it receives a percentage of the gross sales price of coal mined, produced and sold, as well as monthly reimbursement of costs. No coal is marketed or sold at the retail level.

The PTP also provides energy infrastructure support services to oil and gas producers, including construction of drill pads, access roads, and fluid storage pads. It also provides the producers with heavy equipment and trained personnel in the event the producers or oilfield service companies require additional support services in mobilizing or demobilizing their drilling, completion or production activities. The IRS ruled that the PTP’s income in the form of management fees, cost reimbursements and cost-sharing payments related to its management and operation of mining, production, processing, and sale of coal on behalf of the joint venture, as well as its income from the described energy infrastructure support services, would be qualifying income under § 7704(d)(1)(E).

**PLR 201417005, issued October 21, 2013; released April 25, 2014. Tanker Transport under Time Charters.**

The taxpayer is a prospective PTP to which another company plans to distribute subsidiaries owning product tankers designed and certified to transport crude oil, petroleum products, and certain chemicals. The tankers will become the PTP’s initial fleet and carry refined products or crude oil. They will be operated under time charters with third parties under which the PTP will employ the master and crew of each tanker though contracts with a third party manager and be responsible for the navigation, operation, and maintenance of the vessel. The PTP will also be granted an option to buy several newly built vessels from a third company which has entered into time charters with major oil and gas companies for each vessel. Under the time charters the PTP is generally responsible for all aspects of the navigation, operation, and maintenance of the vessel, bears the risk of loss of the vessel, and is subject to various compensation reductions in the event of nonperformance. The charterer has the obligation to provide the master with instructions and sailing directions and is responsible for providing and paying for fuel, towage and pilotage, port charges and any expenses of loading and unloading cargo. The ruling describes in detail a number of other specifics of the charter arrangements, some of which are common to all the charters and some of which vary among them.

The IRS ruled that the PTP's income from transporting crude oil, refined petroleum products, and other products qualifying under § 7704(d)(1)(E) pursuant to the charters would be qualifying income within the meaning of § 7704(d)(1)(E).

### PLR 201416003, issued December 27, 2013; released April 18, 2014. Fluid Handling Services.

An existing PTP was planning to generate income from 1) supplying fresh water via pumps and pipelines for use in the fracking process; 2) transporting fluids for use in oil and gas production; 3) transporting fluids to well sites; and 4) transporting flowback, produced water and other drilling and production wastes from producers' well sites to disposal facilities owned by third parties. The IRS ruled that the PTP's income from the fluid handling services described would be qualifying income under §7704(d)(1)(E).

### PLR 201414004, issued September 11, 2013; released April 4, 2014. Frac Sand.

A PTP earns income from a variety of natural resource related business. One line of business generates income from the mining, processing, wholesale marketing, and transportation of frac sand to customers engaged in the exploration and production of oil and natural gas. The majority of its income in this area comes from marketing the sand to oilfield services companies that resell it to oil and gas producers, but it occasionally markets the sand directly to producers. The IRS ruled that the PTP's income from its frac sand operations is qualifying income under §7704(d)(1)(E).

### PLR 201414002, issued December 16, 2013; released April 4, 2014. Frac Fluid Services.

The taxpayer is a limited partnership which plans to become publicly traded through an IPO. The partnership will earn income primarily from gathering and transporting oil and natural gas via gathering systems and pipelines; however, it also expects to earn income by providing essential fluid handling services to oil and gas producers. Specifically, it will supply fresh water for use in the fracking process, transport the fracking fluid to producers' well sites for use in exploration and production activities, and transport drilling and production wastes from producers' well sites to disposal facilities owned by third parties. The transportation will be provided by pipelines, trucks, and other equipment which the partnership is likely to own but may be owned by a third party. The IRS ruled that income earned from these fluid handling services would be qualifying income under § 7704(d)(1)(E).

### PLR 201412007, issued November 25, 2013; released March 21, 2014. Oil and Gas Related Services.

This PLR is heavily redacted, so provides only limited information. The taxpayer is a partnership which plans to be listed and publicly traded. A company which the partnership plans to acquire "a full suite of services," specifics of which are redacted, to customers engaged in the production, processing, and transportation of oil and natural gas. Some aspect of these services "is an essential element in oil and gas production, processing, and transportation". The IRS ruled that the partnership's income from provision of these services would be qualifying income under § 7704(d)(1)(E).

### PLR 201411004, issued November 8, 2013; released March 14, 2014 Sale of RINs; Fuel Delivery to Mining Sites.

The taxpayer is a partnership engaged, among other things, in the processing and marketing of gasoline and diesel fuel. It generates merchantable renewable fuel identification numbers (RINs) in the course of blending ethanol into gasoline and in producing renewable fuel from soy oil, animal fats, and waste cooking oil and blending it with traditional diesel products. From time to time it sells its excess RINs to a third party through a broker. The partnership also earns income by delivering refined fuels at mining sites to coal mining companies for use in their coal mining machinery and equipment, and stated that this service is a critical and necessary part of developing coal mines and producing coal. The IRS ruled that both the partnership's income from selling excess RINs and its income from the fuxx`el delivery are qualifying income under § 7704(d)(1)(E).

### PLR 201410017, October 28, 2013; released March 7, 2014. Fluid Handling and Disposal.

This PLR is another ruling on oilfield services related to fracking. The taxpayer is a PTP which plans to provide fluid handling and disposal services to oil and gas producers. It will earn income from supplying water in the fracking process; disposing of flowback, produced water, pit water, drilling mud and other drilling and production wastes in accordance with environmental regulations; and hydrocarbon remediation services,--removing skim oil and similar hydrocarbons from drilling waste and selling them. It will provide transportation services for the water via trucks, tanks, and pipelines. As the business grows, it expects to source a portion of its water from third parties; for this water it will convert an existing gas gathering system that it owns into a water transportation system. It will also provide inter-well transportation services. The IRS ruled that the PTP's income from these activities will be qualifying income under section 7704(d)(1)(E).

### PLR 201408025, issued November 13, 2013; released February 21, 2014. Mining and Processing an Unnamed Product.

This one of those PLRs that does not tell us much because important information has been redacted. The taxpayer plans to form a PTP which will mine an unnamed feedstock and process it into an unnamed product through a series of steps, the details of which have been redacted. The product will be sold to unspecified third parties; income will also be generated from storage and transportation of the product. The IRS held that income from the mining, processing, marketing, storage, and transportation of the product would be qualifying income under section 7704(d)(1)(E).

**PLR 201408008, issued October 29, 2013; released February 21, 2014. Supplying Nitrogen and Oxygen to Refinery.**

An existing PTP operates a system of petroleum product and crude pipelines, storage tanks, distribution terminals, and loading rack facilities. The PTP intends to acquire an air separation unit (ASU) which is a permanent piece of equipment built on the site of a crude oil refinery and integrated into the refinery facilities. The ASU's entire existing capacity is dedicated to supplying nitrogen and oxygen to the refinery, and it will not be used for other purposes. The PTP plans to build or acquire ASUs at other refineries to serve the same purpose. The PTP has represented to the IRS that nitrogen and oxygen are essential elements in operating a refinery. The ASU to be acquired uses a cryogenic process to separate atmospheric air into oxygen and nitrogen, concentrate each to a high level of purity, remove them to separate towers, and direct them to plant supply headers. The IRS ruled that income from operating 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, would be qualifying income under section 7704(d)(1)(E).

**PLR 201405011, issued September 25, 2013; released January 31, 2014. Oilfield Services.**

This PLR provides limited information, as the services involved are not identified. The taxpayer requesting the ruling is a PTP providing redacted services to clients engaged in natural gas production and processing. The PTP's affiliate is engaged in a redacted business and provides operations, maintenance, service, and a redacted operation for oil and natural gas production, processing, and transportation applications. The PTP intends to acquire a portion of its affiliate's redacted business, including customer contracts and redacted items. The affiliate provides substantial services and is require to perform redacted services. The IRS ruled that income from the provision of redacted services to customers engaged in the production, processing, and transportation of oil and natural gas constitutes qualifying income under section 7704(d)(1)(E).

**PLR 201403008, issued September 13, 2013; released January 17, 2014. Grease Blending and Packaging.**

An existing PTP is engaged in the business of storage, transportation, processing, and distribution of petroleum products, natural gas, and natural gas liquids. The PTP blends refined petroleum distillates and lube oil base stocks with a "soap" or "thickener" to create lubricant-greases, which are semi-solid suspensions. The products are sold to wholesalers and other fuel distributors and marketers. The PTP also plans to engage in an operation, the details of which have been redacted, and will use the base oil in its blending and packaging activities and sell any surplus base oil and other refined petroleum products to wholesalers and retail distributors, but not to retail end-users. The IRS ruled that the PTP's income from the grease blending and packaging operation and the redacted operation will constitute qualifying income under section 7704(d)(1)(E).

**PLR 201403004, issued September 6, 2013; released January 17, 2014. Additization and Blending Activities.**

An existing PTP is engaged in the transportation, storage, and distribution of refined petroleum products owns a number of refined product terminals. The PTP charges fees at these terminals for receiving and loading fuels onto delivery vehicles for transportation. It also generates fees injecting fuel additives and blending ethanol and biodiesel into petroleum products during the loading process. The PTP acts solely as a wholesale distributor of refined petroleum products and does not engage in retail activity. The IRS ruled that the PTP's income from its additization activities, ethanol blending, and biodiesel blending activities is qualifying income under section 7704(d)(1)(E).

## 2013

**PLR 201351009, issued September 12, 2013; released December 20, 2013. Iron Ore Processing.**

A PTP which currently operates cokemaking facilities plans to expand its operations to include iron ore processing through the benefication and pelletizing processes. Benefication includes crushing and grinding iron ore particles, separating them, and iron ore upgrading, floatation and thickening. Pelletization agglomerates and hardens iron ore particles into larger pellets suitable for use in ironmaking and steelmaking. The PTP might either purchase iron ore from a third party and sell the processed pellets ) and concentrates to iron and steel manufacturers (not retail customers on its own account, or perform the processing as a service for other parties which own the ore. The IRS ruled that income derived by the PTP from iron ore processing and the non-retail sale of iron ore pellets and concentrates would be qualifying income under section 7704(d)(1)(E).

**PLR 201349004, issued August 29, 2013; released December 6, 2013.**

Converting Butane to Butadiene and Output Stream. An existing PTP is building a facility to convert butane into butadiene through dehydrogenation or catalytic cracking. The process will also create an output stream consisting of unreacted butane, hydrogen, ethane, methane, and other NGLs (referred to as Crude C4) as byproducts, which the PTP may further separate. The PTP will receive income from contracts under which it processes butane for customers (which may be supplied by the PTP or by third parties) and delivers butadiene according to an agreed-upon yield ratio, and at times the Crude C4, to the customers. It will be paid a monthly formula based cash fee for these services and will also earn income by selling both products made from its own butane and butadiene produced for customers that exceeds the yield ratio. The .The IRS ruled that the PTP's income from the conversion of butane into butadiene or Crude C4 and its income derived from marketing, transporting, or storing butadiene or Crude C4 will constitute qualifying income under section 7704(d)(1)(E).

**PLR 201347015, issued July 22, 2013; released November 22, 2013. Provision of Throughput, Logistics, and Oilfield Supply Services.**

A limited partnership (LP) operates a diversified business focused on the storage, transportation, processing and distribution of natural resources. It provides three sets of services. One business activity is redacted but is summarized as "Access and Throughput Activities." The LP planned to acquire another company that provides beginning to end logistics services; although redacted, they are titled "Energy Logistics Support Services." The other company also provides "Oilfield Supply and Distribution" services consisting of selling and/or delivering refined petroleum products and other chemicals necessary for the exploration, drilling and production of oil and natural gas, to exploration and production companies and provides exploration and production companies with recycling and disposal services for many of these refined petroleum products and chemicals. The IRS ruled that the LP's income from Access and Throughput Activities, Energy Logistics Support Services, and Oilfield Supply and Distribution, would be qualifying income within the meaning of section 7704 (d)(1)(E).

**PLR 201347001, issued July 23, 2013; released November 22, 2013. Fluid Storage and Connection Equipment.**

The taxpayer manages the fluid handling needs for North American oil, natural gas and geothermal energy producers, as well as for companies engaged in the hydrostatic testing of natural gas pipelines and for certain crude oil and petroleum refiners in connection with refinery turnarounds. It provides storage capacity in the form of frac tanks to these customers. It also provides related connection equipment and connection services integral to the provision of the frac tanks ("Connection Equipment and Maintenance Service"), and services in connection with and in support of the provision of storage capacity ("Fluid Storage Maintenance"). In limited circumstances, the taxpayer enters into contracts with storage customers solely for storage capacity and connection equipment. The IRS ruled that income from customer contracts to provide fluid storage capacity, Connection Equipment And Maintenance Service, and Fluid Storage Maintenance, each of which constitutes a part of the exploration, development, production, processing, refining or transportation of natural resources, will constitute qualifying income under § 7704(d)(1)(E). However, income earned under contracts solely for storage capacity and connection equipment will not qualify

**PLR 20**1346007, issued July 18, 2013; released November 15, 2013. Processing and Marketing Synthe**sis Gas and Methanol.**

A limited partnership planned to become a PTP and to operate two facilities that would process natural gas into methanol and synthesis gas. The process involves combining natural gas with steam under high heat in a steam methane reformer to produce synthesis gas, then converting the synthesis gas into methanol, hydrogen, and water in the presence of a copper-based catalyst. The synthesis gas and methanol would then be sold to third-party distributors, who would distribute them to end-users. The IRS ruled that the income from processing and marketing of methanol and synthesis gas produced through the processing of natural gas would be qualifying income under § 7704(d)(1)(E).

**PLR 201341011, issued June 26, 2013; released October 11, 2013. Frac Fluid Services**

This is another in the series of oilfield services PLRs. The taxpayer, a limited partnership plans to go through an IPO and become publicly traded. The new PTP will provide fluid handling and disposal services to oil and gas producers engaged in fracking. These will include transportation and tank storage services for production fluid; removal, storage, and transportation of flowback; and treatment and disposal of waste. It will charge its customers fees for all these services. As part of its waste disposal facility, the PTP may reclaim and recycle skim oil and other hydrocarbons. The IRS ruled that the fees received for providing these services will be qualifying income under section 7704(d)(1)(E). Income from recovery, treatment, and non-retail sale of skim oil as part of the fluid treatment and disposal process will also constitute qualifying income.

**PLR 201340011, issued June 26, 2013; released October 4, 2013. Processing, Marketing, Storing and Transporting Products.**

This PLR is of limited use, as both the natural resources involved, the products into which they are processed, and the nature of the processes are not identified. The taxpayer requesting the ruling is a corporation planning to form a PTP to which it will transfer a facility which the PTP will use to "process Natural Resource 1 to produce Product 1," using "Process 1", and to "process Natural Resource 2 into Product 2 using Process 2." The products will be sold to manufacturers which will further process them into other products sold at retail. A, "Product 3" is produced as a byproduct of "Process 2" and sold for use in refineries. In addition, the PTP will transport and store Products 1 and 2 but not sell either at the retail level. The IRS ruled that the PTP's income from processing Natural Resources 1 and 2 into Products 1 and 2 would be qualifying income under section 7704(d)(1)(e). The PTP's income from marketing, storing and transporting all three products would also be qualifying income.

**PLR 201338035, issued May 9, 2013; released September 20, 2013. Providing Fracking Materials and Services**

The taxpayer, an LLC, planned to form a PTP that would earn income by providing essential fluid, solids, and other oilfield waste handling, treatment, and disposal services necessary for its customers' use of fracking for oil and natural gas extraction. It would earn fees from providing producers with waters, chemicals, and other solutions used for fracking; providing transportation services for these fluids via trucks, tanks, and pipelines; providing heating services for the fluids; and removing, treating, and disposing of fluids and other waste materials from fracking as well as fluids used to wash and remove debris from containers, trucks, and equipment. The PTP will also earn income from hydrocarbon remediation services, removing hydrocarbons from drilling waste, and sale of reclaimed hydrocarbons (it will not to end-users at the retail level); and from miscellaneous other services including provision of refined fuels to producers for use in oil and gas E&P, developing and operating rail transit assets, developing and operating communications technology to provide remote monitoring capabilities, and infrastructure inspection services. The IRS ruled that income from all of these services would be qualifying income under section 7704(d)(1)(e). The "miscellaneous services" qualify to the extent they are provided to customers engaged in drilling, exploration and production, transportation, or mining of a mineral or natural resource for use in those activities, and not to end users at the retail level.

**PLR 201338001, issued May 30, 2013; released September 20, 2013. Marketing Refined Products to Producers.**

A PTP is engaged in the wholesale distribution of products (specifics have been redacted) to undisclosed customers. The PTP represented to the IRS that these wholesale activities are not consistent with a retail sale, and that any variation in sales price is due to volume purchased, as well as the creditworthiness and location of the customer. The PTP also sells fuel, lubricating oils, other refined petroleum products, including kerosene and naphtha, and other products, including synthetic lubricating oils, methanol, and antifreeze, to customers engaged in oil and gas exploration and production (E&P). It delivers them in specially designed trucks not suitable for more conventional types of fuel delivery. The PTP represented that these products are essential to the exploration for and production of oil and gas. The IRS ruled that the PTP's income from marketing the undisclosed product, as well as its income from marketing fuel, lubricating oils, and other refined petroleum products for use in oil and gas E&P, constitute qualifying income under section 7704(d)(1)(E).

**PLR 201337014, issued May 30, 2013 released September 13, 2013. Processing NGLs.**

A publicly traded partnership engaged in natural gas midstream activities transports and stores one or more redacted products through a network of pipelines and storage caverns, and also sells one or more redacted products to manufacturers and other industrial customers or to customers who resell to industrial customers. The PTP plans to acquire one or more facilities at which it would refine or process NGLs one or more redacted products which would be stored and transported, often in existing pipeline and storage facilities, to manufacturers and other industrial customers. It may conduct these activities as a joint venture, treated as a partnership, with a strategic or financial partner. The IRS ruled that income from the described activities, whether earned directly through the PTP's subsidiary or through a joint venture, would be qualifying income under section 7704(d)(1)(E).

**PLR 201336016, issued May 7, 2013; released September 6, 2013. Fluids Management and Technology.**

A corporation planned to form a PTP and contribute all or a portion of its business assets and operations to it. The business operations provide a broad scope of fluids management and fluids technology services to the oil and gas exploration and production industry. These are described in extensive detail in the ruling. The company's fluid management services include water transfer services via pipeline system; water filtration; above-ground fluids storage in steel tanks; field fluids logistic services, including fluids transportation and storage and supply and

storage of various proppants; water conditioning for re-use; flowback and well testing services; and logistics and distribution services to support its product and service offerings. It also provides "hot oil" services to establish and maintain production of oil and gas wells.
The company's fluid technologies business consists mainly of completion and stimulation products. It develops, manufactures, and supplies both a full suite of specialty oilfield products, including fracturing components such as guar and other guar derivatives, cross-linkers and breakers, stimulation chemicals, acids and additives, cementing chemicals and additives; and a wide range of commodity chemicals. It also derives income by providing oilfield operators with production support through the development, manufacture, and sale of production and specialty chemicals and related services. The company analyzes underperforming wells and engineers chemical solutions designed to stimulate production and reduce production costs.

The IRS ruled that the income from these fluids management and technology activities would constitute qualifying income under section 7704(d)(1)(E). .

**PLR 201336006, issued April 22, 2013; released September 6, 2013. Removal and Treatment of Liquid Waste from Fracking.**

A partnership expected to derive income from (i) the removal, transportation, storage, treatment and disposal of brine, water, and other residual waste produced in connection with the fracturing of oil and gas wells, and (ii) the marketing of oil recovered as a result of the treatment of the waste. It requested a ruling that the income from these activities, other than any income derived from the sale of crude oil to end users at the retail level, would be qualifying income under section 7704(d)(1)(E). The IRS ruled that the income would be qualifying income, based on the partnership's representation that transportation, storage, treatment and disposal of brine, water, and other residual waste produced in connection the development of oil and gas wells is integral to the exploration, production and development of minerals and natural resources.

**PLR 201331002, issued April 16, 2013; released August 2, 2013. Liquid Urea for Fertilizer.**

A PTP was engaged in the manufacture of nitrogen fertilizer products, including nitrogen, UAN, and urea. Liquid urea (urea diluted with water) can be used as a foliar spray fertilizer. The PTP sells liquid urea in a concentration suitable for use as a fertilizer to a specialty petroleum products distributor, which dilutes it and resells it for use as diesel exhaust fluid. The IRS ruled that the PTP's income from the non-retail sale of liquid urea to the petroleum products distributor is qualifying income under section 7704(d)(1)(E).to the extent the product sold would otherwise be marketable as agricultural fertilizer.

**PLR 201330027, issued April 18, 2013; released July 26, 2013. Kaolin and Bauxite for Ceramic Proppants.**

A prospective PTP's income from mining, processing, and marketing of sedimentary kaolin and bauxite for sale to oilfield service companies for use as a ceramic proppant in the production of crude oil and natural gas would be qualifying income under section 7704(d)(1)(E).

**PLR 201330026, issued April 18, 2013; released July 26, 2013. Sand and Other Products for Proppants.**

A PTP's income from mining, processing, and marketing sand, certain redacted products, and ceramic products for use as proppants in fracturing operations; and from producing and selling well simulation products which increase the efficacy of certain proppants, is qualifying income under section 7704(d)(1)(E).

**PLR 201330024, issued April 10, 2013; released July 26, 2013. Fractionation Fluid Handling.**

A PTP's income from the supply, transportation, and storage of fractionation fluid and other fluids for oil and natural gas wells, and from the removal, treatment, and disposal of fracturing flowback and produced water, including the provision of frac tanks and transportation services, to oil and natural gas producers, is qualifying income under section 7704(d)(1)(E).

**PLR 201330023, issued April 22, 2013; released July 26, 2013. Fractionation Fluid Handling.**

A prospective PTP's income from the supply, transportation, storage, and disposal of a variety of fluids, including any associated fractionation fluid heating services; and from the subsequent removal, treatment, and disposal of fracturing flowback, produced water, and salt water (including, as part of its fluid handling services, the provision of frac tanks and transportation services) would be qualifying income under section 7704(d)(1)(E).

**PLR 201328005, issued April 2, 2013; released July 12, 2013. Pipeline Activities.**

A PTP planned to earn income from relocating pipelines and related facilities that it used to transport minerals or natural resources to accommodate requests from third parties (e.g., to accommodate surface construction or subsurface development); the construction, installation, maintenance, and operation of, and transfer by customers to the PTP of, interconnects to pipelines used to transport minerals or natural resources; and the sale of condensate collected from pipelines used to transport minerals or natural resources. The PTP represented that these activities were integral to the pipeline transportation of minerals and natural resources. The IRS ruled that the PTP's income from these activities would constitute qualifying income under §7704(d)(1)(E).

**PLR 201324002, issued February 21, 2013; released June 14, 2013. Processing Natural Gas into Gasoline, LPG, and Other Products.**

This ruling is based on a process similar to those described in PLRs 201315015 and 20131438 below. The taxpayer plans to form a PTP and convey to it a facility that processes natural gas into methanol and synthesis gas, then processes those products into gasoline and LPG, in an integrated three-step process. Natural gas is combined with steam at high heat to produce synthesis gas and the synthesis gas is then converted into methanol, hydrogen, and water via a copper-based catalyst. The methanol is then converted to dimethyl ether (DME) and water, which is passed over another catalyst to produce gasoline, LPG, and water. The PTP will sell the gasoline, LPG, methanol, and synthesis gas to third-party distributors, who will then further distribute or process them. The IRS ruled that the PTP's income from processing and marketing of gasoline, LPG, methanol, and synthesis gas produced through the processing of natural gas would constitute qualifying income under §7704(d)(1)(E).

**PLR 1322024, issued February 21, 2013; released May 31, 2013. Hydraulic Fracturing Services.**

The taxpayer, an LLC treated as a partnership, plans to form a PTP that will, after its IPO, carry on its current oilfield services business. The taxpayer provides high-pressure hydraulic fracturing services to exploration and production (E&P) companies using mobile hydraulic fracturing units and associated heavy equipment that it owns and that are operated by its employees and independent contractors. The taxpayer represents these services to be integral to the production of oil and natural gas from wells drilled in shale and other tight formation reservoirs. The taxpayer has entered a contract with an independent exploration and production company to provide the company with hydraulic fracturing services for 24 months in return for various fees. The taxpayer represents this arrangement as typical of those that it (or the future PTP) will have with other E&P companies. The IRS ruled that the income the taxpayer will derive from hydraulic fracturing services is qualifying income under §7704(d)(1)(E).

**PLR 201316005, issued December 27, 2012; released April 19, 2013. PLR 201316005. Modifying Prior Silica Ruling.**

This ruling retroactively modifies PLR 20123309 to correct the description of the way the PTP's IPO structure. In addition, it fills in details which had been redacted from the earlier ruling, so that we now know the ruling dealt with extraction, transportation, marketing, and sales of silica for use as a proppant in the extraction of crude oil and natural gas.

**PLR 201315015, issued January 3, 2013; released April 12, 2013. Processing Natural Gas into Gasoline and LPG.**

The taxpayer requesting the ruling was a corporation which had formed a PTP. The corporation planned to convey to the PTP a facility that processed natural gas into gasoline and LPG through a three-step integrated process similar to the one described in PLR 201314038: natural gas is combined with steam at high heat to produce synthesis gas and the synthesis gas is then converted into methanol, hydrogen, and water via a copper-based catalyst. The methanol is then converted to dimethyl ether (DME) and water, which is passed over another catalyst to produce gasoline, LPG, and water. The gasoline and LPG are sold to third-party distributors, who in turn distribute them to end users. The IRS ruled that the PTP's income from processing natural gas into gasoline and LPG and marketing the gasoline and LPG would be qualifying income under §7704(d)(1)(E).

### PLR 201315008, issued January 4, 2013; released April 11, 2013. Treasury Locks, Interest Rate Swaps

Forward-start Interest Rate Swaps, and Interest Rate Caps. A PTP engaged in terminaling and storage services for petroleum products and in natural gas services periodically issues debt securities to fund asset acquisitions and conduct its operations. To manage its interest rate risk, the PTP enters into treasury locks, interest rate swaps, forward-start interest rate swaps, and interest rate caps. In some cases these locks, swaps, and caps are integrated with the related debt instruments under Reg. 1.1275-6. The PTP requested a revenue ruling to apply only those cases when they cannot be so integrated. The IRS ruled that the PTP's income from the treasury lock, interest rate swap, forward-start interest rate swap, and interest rate cap Transactions is qualifying income within the meaning of §7704(d)(1) and §1.7704-3(a)(1).

### PLR 201314038 issued December 12, 2012; released April 4, 2013. Processing Natural Gas into Dimethyl Ether (DME).

A corporation is planning to form a PTP which will build a facility to process natural gas into dimethyl ether (DME), a premium diesel fuel. DME is produced by a three step process in which natural gas is combined with steam at high heat to produce synthesis gas, the synthesis gas is converted into methanol via a catalyst, and the methanol is converted into DME via a second catalyst. The DME will be sold to third-party distributors, who will sell it to end users. The IRS ruled that the PTP's income from processing natural gas into DME and marketing the DME will constitute qualifying income under §7704(d)(1)(E).

### PLR 201314029, issued November 28, 2012; released April 4, 2013. Income Received Under Expansion Agreements.

The PLR was requested by a PTP engaged in the terminaling, storage, and transportation of crude oil, refined products, and LPG, with assets including storage tanks, marine docks, and pipeline. The PTPs' facilities serve as hubs connecting multiple modes of transportation of crude oil, refined products, and LPG, (pipelines, trucks, barges, tankers, rail) from producing regions to refineries and on to their ultimate markets. Storage capacity is required at these hubs to facilitate efficient transportation and accommodate supply and demand imbalances. At times no pipeline exists between a prospective customer and the PTPs' facilities, and sometimes the assets at these facilities need to be expanded to meet the customer's needs. At such times the PTP and the customer may enter into an expansion agreement under which the needed facilities will be constructed. All expansion agreements require the customer to bear some of the construction costs; this is done in various ways. The PTP represented to the IRS that the expansion agreements were integral to its terminaling, storage, and transportation activities: they were necessary to facilitate service relationship; that was their sole purpose; and they were only entered into if the PTP was also entering into a terminaling, storage, and transportation agreement with that same customer. The IRS ruled that the amounts the PTP received from terminaling, storage, and transportation customers for construction of terminaling, storage, and transportation facility improvements (or receipt of improvements from the customers) under expansion agreements was qualifying income under §7704(d)(1)(E).

**PLR 201313015, issued December 18, 2012; released March 29, 2013. Income from Service Agreements of Subsidiary.**

A PTP principally engaged in the transportation and storage of petroleum products had an indirect ownership interest in another company and was allocated a share of operating services fee income and related cost reimbursements earned by that company. The income was earned under various agreements for operation of specified assets owned by the service recipients, including both general and administrative services and direct operation and maintenance of specified assets. Services include taking delivery from customer, moving products through the assets, offloading products to customers, and various maintenance and administrative tasks. The IRS ruled that the income derived by the PTP from the service agreements would be qualifying income under§7704(d)(1)(E).

**PLR 201313014, issued December 11, 2012; released March 29, 2013. Operation of Customer's Natural Gas Compressors.**

In this PLR, a PTP had entered into an agreement with a natural gas gathering company to operate that company's natural gas compressors, including all tasks necessary to physically compress natural gas and move it through the processing equipment. The PTP was paid service fees for these services. The IRS ruled that income derived from the agreement was qualifying income under §7704(d)(1)(E).

**PLR 201308004, issued November 5, 2012; released February 22, 2013. Production and Marketing of Fertilizer Products to Non-Agricultural Customers.**

This PLR was requested by a PTP engaged in production and marketing of fertilizer products. The IRS ruled that the income derived by the PTP from the production and marketing of ammonia, urea, UAN fertilizer, nitric acid, and urea in solution for non-retail sale to customers operating in non-agricultural industries would be qualifying income under §7704(d)(1)(E) to the extent that these products would otherwise be marketable as fertilizer for agricultural purposes.

**PLR 201301010, issued September 28, 2012; released January 4, 2013. Sale of Blended and Processed Petroleum Products.**

The PTP requesting this ruling refines and blends crude oil and other petroleum-based feedstocks into undisclosed refined products. It also blends, processes, packages, markets, and distributes undisclosed lubricants that are a blend of hydrocarbon-based feedstocks and small amounts of additives. The products are primarily sold to wholesalers and other fuel distributors and marketers, and certain products are sold in bulk to government, commercial, and industrial users in quantities and at prices that are not consistent with a retail sales transaction. The IRS ruled that income from these activities is qualifying income under section 7704(d)(1)(E).

## 2012

**PLR 201250003, released December 14. Offshore Oil and Gas Platform as Real Property.**

This ruling is a significant one for both MLPs and REITs, as it expands the notion of what will be treated as "real property" to include offshore oil and gas platforms. In this case, the PTP was negotiating the lease of an offshore platform located in deep water offshore, with related machinery and equipment installed on the platform. The platform will consist of three sections designed to be permanently connected and act as a single structure: a vertical hull, a topside section of working decks connected to the hull, and a mooring system to attach the platform to the seabed. Machinery and equipment installed on the platform will be used to extract oil and gas from the lessee's undersea wells, separate oil and gas from the crude, and condition the oil and gas for export in gathering pipelines. Additional machinery on the platform will separate the extraction, separation and conditioning machinery, and the operation and maintenance of the platform. In addition, motor control equipment would control the machinery. The platform is intended to remain in the same location indefinitely, and no similar platform has ever been removed.

The lessee, an unrelated party, will have an initial exclusive use agreement, during which it will make monthly fixed payments to the partnership in addition to monthly fees based on the amounts of oil and gas processed and sent through the gathering pipelines. After the initial period, the lessee will have the right to use specified amounts of the platform's production handling capacity and pay fees based on amounts processed, with the right to reserve additional capacity in increments and pay a fee based on capacity reserved. After the exclusive use period, the partnership may lease the remaining capacity not used by the lessee. The lessee will be the operator of the platform with the exclusive right and obligation to operate and maintain it during the exclusive use period, Employees of the partnership will be on hand to make sure it does so. These employees will not perform any services for the lessee.

The partnership requested a ruling that income derived from leasing the facility will constitute rents from real property under § 856(d) and therefore constitutes qualifying income under §7704(d)(1)(C). After analysis of the statute and regulations, as well as several revenue rulings on real property and structural components, the IRS ruled that income earned under the lease would qualify as "rents from real property" under section 856(d) so long as rent attributable to the leasing of the machinery, as personal property which is leased under, or in connection with, the lease did not exceed 15 percent of the total rent for the tax year attributable to both the real and personal property under the lease. The IRS also concluded that the partnership's activities with respect to the platform would not cause the income to be treated as other than "rents from real property." The lease income would therefore constitute qualifying income under section 7704(d)(1)(C).

### PLR 201250014, released December 14, 2012. Marketing Refined Products.

This ruling was requested by a partnership that was planning to do an IPO and become publicly traded. The partnership is an independent wholesale distributor of refined petroleum products and natural gas, making bulk sales of these products to customers including dealers, distributors, and others (redacted in the document). It purchases refined products including gasoline, diesel fuel, and residual fuel oils, from refineries, trading organizations, and various producers, conducts operations at its terminals, and sells the products to its customers, which include dealer, distributors, and others..

The particular refined fuels for which the PLR was requested are redacted. Also redacted are the customers to whom the partnership sells natural gas after purchasing it from producers and trading companies. The IRS ruled that the partnership's income from the marketing of the undisclosed products was qualifying income under §7704(d)(1)(E).

### PLR 201241004, released October 12, 2012. Production, Transportation, and Storage of Olefins.

A PTP intends to acquire and operate a facility that processes the NGLs ethane and propane into olefins through a cracking process and sell the olefin to third parties as feedstock for production of chemical derivatives. The process involves use of a gas fired furnace to apply heat and pressure to the NGL molecules and remove their hydrogen atoms, producing olefins as a byproduct. The PTP also intends to acquire olefin pipelines and storage facilities and provide olefin transportation and storage services to third parties. The IRS ruled that the PTP's income from processing NGLs into olefins, as well as income from the transportation and storage of olefins, would be qualifying income under §7704(d)(1)(E).

### PLR 201236005, released September 7, 2012. Processing of Petroleum Products via Dehydrogenation or Catalytic Cracking.

The specifics of this PLR have been heavily redacted, but there is still useful information. The taxpayer is a PTP engaged in the transportation, processing, storage, and distribution of natural gas, NGLs, crude oil, and refined products. The PTP is building a facility in which it will use dehydrogenation and catalytic cracking to convert a product (specifics have been reacted; we'll refer to it as Product A) into Product B (also redacted). The process was also expected to create by-products (specifics redacted). The facility would be operated through long-term agreements under which customer(s) (specifics redacted) will deliver Product A to the PTP (the customer(s) may buy feedstock from the PTP or from third parties) and receive back Product B in accordance with an agreed-upon yield ratio. In return, customers will pay a monthly, formula-based cash fee. The PTP will retain a product as additional compensation, and may retain any Product B produced above the yield ratio. The IRS ruled that the PTP's income from converting Product A into Product B will constitute qualifying income under §7704(d)(1)(E).

### PLR 201234005, released August 24, 2012. Water Pipeline for Hydraulic Fracturing.

This PLR breaks new ground, as it involves a water pipeline. The PLR was requested by a PTP engaged, through its subsidiaries, in transportation (via gathering pipelines) and processing natural gas. Its customers are natural gas producers using hydraulic fracturing to extract natural gas from geological formations, a process requiring large volumes of water. The PTP and another party have formed an LLC taxed as a partnership which will build, own, and operate a water delivery pipeline system to supply water to its customers and other natural gas producers. The pipeline will run primarily parallel to the PTP's gathering pipelines and share their right-of-way. The LLC will earn income from long-term pipeline capacity and supply agreements with the PTP's current customers, and eventually with other natural gas producers, under which the water will be transported to water impound ponds that the producers designate.

The PTP represented to the IRS that the supply and transportation of fresh water to natural gas producers for use in hydraulic fracturing is integral to both the exploration and production of natural gas from shale formations and the preservation and growth of the PTP's existing natural gas transportation, and that the PTP (through the LLC) is uniquely situated to provide that water because of its existing rights of way and expertise. The water will be provided solely to natural gas producers.

The IRS ruled that the PTP's distributive share of the LLC's income from the supply and transportation of water to oil and gas producers for use in the exploration, development, and production of oil or natural gas is qualifying income within the meaning of § 7704(d)(1)(E). It warned, however, among other cautions, that it "ha[d] not verified or determined whether any other commercial use may exist for the water delivery pipeline system developed, constructed, owned, and operated by [the LLC]. To the extent that other commercial uses may exist for the water delivery pipeline system, this letter ruling will not apply in determining whether [the PTP's] distributive share of any gross income that may be derived from such other uses constitutes qualifying income under § 7704(d)(1)(E)."

### PLR 201233010, released August 17, 2012, Natural Gas Gathering, Processing and Anime Regeneration Services.

The taxpayer is an LLC which plans to form a PTP with a related party. The new PTP will engage in gathering and processing natural gas and operating natural gas processing facilities. The PTP will own and provide gathering services on two gathering systems. It will also own an interest in a natural gas processing plant, which chills natural gas streams in order recover NGLs, and related facilities including an NGL storage facility. The PTP will operate the plant and receive a fee for its management services, which will include maintaining all financial records and filing all necessary operational reports and notices required by government authorities. Finally, the PTP will own an amine regeneration unit and related equipment within a third-party natural gas processing plant. Amine gas treating is a group of processes that use chemical solutions to remove hydrogen sulfide and carbon dioxide from gases. The IRS ruled that income from all of these activities would be qualifying income under section 7704(d)(1)(E).

**PLR 201233009, released August 17, 2012. Extraction, Transportation, Marketing, and Sales of Silica.**

This PLR was heavily redacted when originally released so that it was impossible to tell the product involved. Fortunately, a subsequent ruling retroactively modifying this one has filled in the details (see PLR 201316005). A partnership will own and develop silica reserves. Its activities will include extraction, transportation, marketing, and sales of the silica in large quantities to industrial users, specifically oil field service companies, for injection as a proppant in the production of crude oil and natural gas. The IRS ruling states that the income derived from these activities is qualifying income under section 7704(d)(1)(E).

**PLR 201232020, released August 10, 2012. Income from Sale of Renewable Identification Numbers.**

A PTP is engaged in operating a refined products pipeline business, a natural gas storage business, and refined petroleum and related products terminals. It serves as a distributor of petroleum products in areas that are served by its pipelines but does not engage in retail activities. The PTP blends ethanol into gasoline and biodiesel fuel at several terminals and sells blended gasoline and diesel fuel as a wholesale distributor. The PTP accumulates "renewable identification numbers" (RINs) as it blends biofuel into conventional fuel. Each 38 character RIN uniquely identifies the batch of renewable fuel and each gallon in that batch. It is transferred along with the fuel until the point when the renewable fuel is blended into conventional fuel or sold in the retail market, at which point it is separated from the fuel and becomes freely transferable. The RINs accumulated by the PTP exceed any obligation it has in connection with its renewable volume obligation under the Renewable Fuel Standard program, so from time to time, it sells its excess RINs to third parties through a broker involved in trading RINs or directly to a producer or importer of conventional fuels. The PTP requested a ruling that its income from the sale of the RINs is qualifying income under section 7704(d)(1)(e), on the basis that it is merely a second revenue stream from the marketing of a natural resource. The IRS so ruled.

**PLR 201232008, released August 10, 2012. Loading, Injecting Additives, and Wholesale Distribution of Refined Products.**

A PTP owns refined product terminals where it receives and stores petroleum products and loads them onto vehicles for transportation to the next point in the fuel supply chain. During the loading process the PTP injects fuel additives and blends biodiesel with gasoline. It receives fees for these additization activities, which also include receiving proprietary additives from various suppliers and blending them according to customers' requirements; obtaining generic additives and blending them into fuels for sales to its customers; and receiving biodiesel from customers, storing it in tanks, and injecting it into gasoline via pipelines. The PTP acts only as a wholesale distributor of refined products and does not engage in retail activity. The IRS ruled that these activities are qualifying income under section 7704(d)(1)(e).

**PLR 201227002, released July 6, 2012. Treatment, Recycling, and Disposal of Fracking Waste.**

A corporation planned to form a publicly traded partnership which would earn income from the removal, treatment, recycling, and disposal of waste products generated by the fracturing process and residual wastes that accumulate in crude oil tank bottoms. The PTP also would earn income from the production and marketing of hydrocarbon products recovered from oil field wastes it handled, collecting crude oil skimmed from oil field wastes during the waste treatment process and selling the salvaged crude oil to oil refiners who did not themselves consume the crude oil in their own operations. The PTP would treat any income derived from the sale of crude oil to third party end users as nonqualifying income. In addition, the PTP would produce an asphalt alternative consisting of drilling and production wastes and mixed with a binder and would sell it to government entities and commercial users for road construction and paving. The IRS ruled that the income from the described activities, excluding any income earned from marketing to end users at the retail level, would be qualifying income under section 7704(d)(1)(e).

**PLR 201227001, released July 6, 2012. Transportation of Products to Oilfields**.

A limited partnership planned to derive income from transportation of refined petroleum products and other products to customers engaged in drilling, exploration and production, and mining activities at the site of such activities. The partnership represented to the IRS that the substantial majority of the vehicles to be used to provide these services were specially designed and custom-built to deliver products to above-ground tanks and other nonconventional delivery points in remote locations, and that substantially all of the use of those vehicles is to deliver products to customers who are engaged in drilling, exploration and production, or mining activities. It also represented that the services in question were integral to the exploration, production and development of oil, gas and coal resources, because those activities would be substantially curtailed without them. The IRS ruled that the partnership's income derived from the transportation of refined petroleum products and other products to customers engaged in drilling, exploration and production, and mining activities at the site of such activities was qualifying income under section 7704(d)(1)(e).

**PLR 201226018, released June 29, 2012. Delivery and Sale of Products to Customers Engaged in E&P and Mining Activities; Refined Products Blending.**

A publicly traded partnership plans to earn income from sources including the extractive logistics business and the refined products blending business. The extractive logistics business income will derive from the delivery and sale of refined petroleum products (principally diesel fuel and lubricating oil), antifreeze, methanol and other chemicals to customers engaged in drilling, exploration and production, and mining activities at the site of th resources; 2) an undisclosed percentage of its extractive logistics income is derived from these services and the rest from conventional profit on the sale of fuel and fluids; and 3) most of the vehicles used to provide the services are specially designed and custom-built to deliver products to non-conventional delivery points in remote locations. Substantially all of the vehicles' use is to deliver products to customers engaged in drilling, exploration and production, or mining activities, and they are not suited (and normally not used) for more conventional types of fuel and lubricant deliveries (such as deliveries to retail gas stations).

The PTP's income from refined products blending will be derived from blending and sale of private label automotive lubricants, as well as the sale of branded lubricants and related products, to automotive dealerships, "quick lube" stores and commercial and industrial end users. It also plans to blend and store lubricants owned by third parties, which the third parties will sell to their customers; and to blend and sell marine lubricants to major oil companies for resale to their customers and to deliver them to the customers.

The IRS ruled that 1) income from the portion of the extractive logistics business involving delivery or sale of products to customers engaged in drilling, exploration and production, or mining activities--and only to such customers-- and 2) income from the refined products blending business (excluding any income derived from the delivery or sale of products to end users) are both qualifying income under section 7704(d)(1)(E).

However, the IRS cautioned that the ruling would not apply to the extent that income from the extractive logistics business was not attributable to its customers' qualifying activities under section 7704(d)(1)(E). An example of income not attributable to qualifying activities would be delivery and sale of refined petroleum products and antifreeze to farms and construction sites.

### PLR 201224023, released June 15, 2012. LNG Conversion and Sale.

A publicly traded partnership owns and operates a terminal which converts LNG into natural gas in a process called "regasification." The process involves receiving and unloading the LNG from tankers, storing and blending the LNG in tanks, and heating it until it is converted into pipeline quality gas. The PTP has represented to the IRS that absent this processing, LNG has no commercial application. The PTP is also adding liquefaction capabilities to the facility, so that it can convert natural gas to LNG for export as well as receive and regasify imported LNG.

The PTP has entered into a long-term contract with another party to obtain and liquefy domestic natural gas, transport the LNG to its docks and load it on a tanker, and ship it to the other party for a contracted sales price. Under the contract the other party must then resell the LNG to third parties. It expects to enter into other, similar long-term contracts in the future. The IRS ruled that the PTP's income from sales of LNG would be qualifying income under section 7704(d)(1)(E).

### PLR 201222029, released June 1, 2012. Transportation, Storage, and Disposal of Petroleum-Water Mix.

A limited partnership was planning to earn income in the form of fees from the removal, transportation, and disposal of the petroleum-water mix produced in connection with natural gas processing activities. The partnership also planned to conduct a fluid treating/recycling business, in which it would further treat the mix to render a portion of it suitable for use in drilling operations, and to generate additional income from the sale of recovered condensates (not including marketing to customers at the retail level). The IRS ruled that the partnership's income from the transportation, storage, and disposal of petroleum-water mix derived from oil and natural gas wells, including any associated condensate sales, is qualifying income under §7704(d)(1)(E).

**PLR 201216022, released April 20, 2012. Fertilizer Production Through Coke Gasification.**

This ruling was requested by a PTP whose business is producing fertilizer through a gasification process which produces hydrogen as a byproduct. Its primary feedstock is petroleum coke, a byproduct of petroleum refining which it obtains from an adjacent refinery. It has an agreement with the refinery under which they provide each other with their excess hydrogen (and other products). Each party pays for a product if it receives more than it provides in any month. The PTP asked for a ruling whether the income it receives from the sale of hydrogen in some months is qualifying income. The IRS ruled that it is qualifying income under §7704(d)(1)(E).

**PLR 201208021, released February 24, 2012. Treasury Locks, Interest Rate Swaps, and Forward-start Interest Rate Swaps.**

A PTP principally engaged in the transportation, storage, and marketing of refined products and natural gas periodically entered into treasury locks to minimize interest rate risk in the period between a decision to issue debt securities and their actual issuance. It also engaged in interest rate swaps to exchange floating rate debt for fixed rate debt and vice versa, and entered into forward-start interest rate swaps to lock in current rates for future issuances. The IRS ruled that income derived from the PTP’s treasury locks, interest rate swaps, and forward-start interest rate swaps were qualifying income under section 7704. The regulations under section 7704 (specifically Reg. §1.7704-3(a)(1)) include income from notional principal contracts (as defined in §1.446-3) and other substantially similar income from ordinary and routine investments as determined by the IRS, if the property, income, or cash flow that measures the amounts to which the partnership is entitled under the contract would give rise to qualifying income if held or received directly by the partnership. Interest rate swaps fall within the §1.446-3 definition of notional principal contract, and the other transactions served a similar purpose.

**PLR 201206004, released February 10, 2012. Injecting Fuel Additives and Ethanol Blending.**

A publicly traded partnership was principally engaged in the transportation, storage and distribution of refined petroleum products, The PTP owned terminals at which it received refined petroleum products, stored them, and loaded them onto vehicles for delivery to the next point in the fuel supply chain. During the loading process it injected fuel additives and blends ethanol into the products. It generated fees at the terminal for a number of "additization" activities and for ethanol blending activities. It requested a ruling that the income from these activities was qualifying income. The IRS affirmed that the PTP's income from its "additization" and ethanol blending activities was qualifying income under §7704(d)(1)(E).

**PLR 201201002, released January 6, 2012. Processing, Transportation, Storage, Marketing, and Distribution of Undisclosed Products.**

A limited liability company intending to form or become a publicly traded partnership planned to engage in processing of a product or products (specifics have been redacted), and transportation, storage, marketing, and distribution of a product or products (also redacted) to a variety of customers. In some cases it owns the product(s) itself for use as a feedstock. It also plans to construct facilities, the specifics of which are redacted. The IRS ruled that the LLC's income from processing the reacted product(s) and from transporting, storing, marketing, and distributing the redacted product(s) would constitute qualifying income under §7704(d)(1)(E).

## 2011

**PLR 201141013, released October 14, 2011.**

A publicly traded partnership engaged in the business of storage, transportation, processing, and distribution of petroleum products, natural gas, and natural gas liquids was planning to acquire certain unspecified refinery facilities and to provide onsite refinery services to its customers (specifics have been redacted). The partnership asked for a ruling that its income derived from the services provided and from transportation of a non-natural resource product to and from refineries (specifics redacted) constitutes qualifying income. The IRS ruled that such income was qualifying income within the meaning of section 7704(d)(1)(E).

**PLR 201137005, released September 16, 2011.**

A limited partnership planned to earn income from the supply, transportation and storage of fractionation fluid and other fluids for oil and natural gas wells, including any associated fractionation fluid heating services. It also would earn income from the subsequent removal, treatment and disposal of fracturing flowback and produced water, including the provision of frac tanks and transportation services. The partnership planned to provide fluids for drilling muds used in drilling oil and gas wells, as well as casing cement used in oil and gas wellbores. It also expected to provide hot oiler services, using heating units to remove paraffin from drilling equipment and to provide heat-based produced water separation services at crude oil stock tanks at a producer’s well site. The IRS ruled that the partnership's income from all of these activities was qualifying income under section 7704(d)(1)(E).

**PLR 201132020, released August 12, 2011.**

A publicly traded partnership is primarily engaged in the storage, transportation, blending, and distribution of crude oil and refined products, as well as the acquisition and marketing of crude oils to refiners and resellers. Its services include supplying butane, installation of its proprietary automated blending systems, and monitoring the blending operations 24 hours a day. It procures a reliable supply of butane and delivers it to customer terminals via truck and railcar. It provides butane blending services both at its own terminals and at terminals operated by unrelated parties. It requested a ruling that income from these services constituted qualifying income. The IRS so ruled, finding that the partnership's income derived from butane blending services was qualifying income under 7704(d)(1)(E).

**PLR 201132012 issued April 29, 2011; released August 12, 2011. Income from gas processing and natural resource storage.**

An existing PTP was engaged in natural gas gathering; natural gas processing; natural gas marketing; and the storage, fractionation, distribution, and marketing of NGLs and NGL products. It had an interest in several facilities including cryogenic gas processing trains, a refrigeration plant and fractionation trains. These connected to gathering lines or common carrier pipelines. The PTP was the operator of the facilities and had engaged in an operation agreement for each. It also serves as the operator of a plant where it processes mixed NGLs under an operating agreement. The PTP was the sole owner of an underground storage facility which consisted of underground storage wells and was connected by pipeline to another asset. X utilized some of these underground wells to provide long-term and short-term storage services and throughput services to internal and third-party customers. It serves as operator of the leased wells. The IRS ruled that to the extent the PTP derived income from the operations of these facilities (which might include fees and cost reimbursements depending on the facts and circumstances), the income would be qualifying income under 7704(d)(1)(E).

**PLR 201114001, released April 8, 2011.**

This PLR involves a limited liability company which intends to create a publicly traded partnership either by creating a new entity or by offering its own units in an IPO. Most of the remaining information is reacted, revealing only that the PTP will be selling something to another party(ies). The IRS ruled that the sale of the item will be qualifying income under section 7704(D)(1)(e).

**PLR 201113018, released April 1, 2011.**

A publicly traded limited liability company choosing partnership taxation engages in the storage and marketing of natural gas through its subsidiaries. Some of the subsidiaries are treated as controlled foreign corporations (CFCs) under I.R.C. section 957(a). The CFCs purchase natural gas from other subsidiaries of the LLC and re-sell it to unrelated third parties. In some cases income from these sales will be treated as transactions in commodities and the net gains from these transactions will constitute foreign personal holding company income, a type of subpart F income. The CFCs may also earn interest that is considered foreign personal holding company income. The LLC may thus be required to include in its income an amount attributable to the subpart F income earned by the CFCs. The IRS ruled that the LLC's pro rata share of the CFCs' subpart F income will be treated as qualifying income without regard to whether or the extent to which the CFCs made distributions to the LLC.

## 2010

**PLR 201043024, released October 29, 2010.**

Income derived from providing, removing, treating, and disposing of fractionation fluid for oil and natural gas wells, and from removing, treating, and disposing of acid mine discharge.

**PLR 201027003, released July 9, 2010.**

Income from marine transportation under various charter agreements of crude oil, refined petroleum products, and other natural resources falling under section7704(d)(1)(E) is qualifying income.

**PLR 201025037, released June 25, 2010.**

Income from providing marine services at an LNG receiving terminal--including escorting LNG marine vessels, assisting in berthing and unberthing LNG vessels at the terminal, standing by vessels in berth, performing emergency response services, conducting salvage and wreckage removal activities, providing picket boat services to a berthed LNG vessel, and performing other ancillary or related tasks, is qualifying income.

**PLR 201005018, released February 5, 2010.**

A PTP owned a terminaling and storage facility which was a system of connected and functionally interdependent components. It wished to lease the facility to an entity that would operate the facility. Because the facility was an inherently permanent structure that was not accessory to the operation of a business, it constituted real property and the income from leasing it was qualifying rental income.

## 2009

**PLR 200939016, released September 25, 2009.** Income from marine transportation of natural resources under various charter agreements is qualifying income.

**PLR 20092702, released July 2, 2009.** Income derived from the production of both straight-run and modified asphalt is qualifying income. The marketing and distribution of the modified asphalt products that the PTP produces, other than income from marketing minerals or natural resources to end users at the retail level, are also qualifying income.

**PLR 200921010, released May 22, 2009.** Receiving, storing, blending, and loading ethanol and ethanol/gasoline blend at refined products terminals is qualifying income subject to regulations pertaining to one issue.

**PLR 200919019, released May 8, 2009**. Income from treasury locks and interest rate swaps used to minimize risk is qualifying income for a PTP primarily engaged in natural resource activities qualifying under section 7704.

**PLR 200909006, released February 27, 2009.** Income derived from a company's business of acquiring and licensing seismic data to oil and gas producers, for use in their exploration for and production of oil and gas resources, constitutes qualifying income under §7704(d)(1)(E) as income from the exploration of a mineral or natural resource.

## 2008

**PLR 200848018, released November 28, 2008.** Income from two refineries purchased by the PTP and from three agreements for refining and processing crude oil into various products at refineries owned by third parties is qualifying income under §7704(d)(1)(E). Income from the packaging, marketing, and distribution of the refined and processed products produced by the refineries, excluding income earned from marketing minerals and natural resources to end users at the retail level, constitutes qualifying income as well. The products included 1) a wide variety of customized lubricant oils, solvents, and waxes; and 2) a variety of fuels and fuel related products, including gasoline oil and jet fuels.

**PLR 200845035, released November 7, 2008.** Income received under "interconnect" agreements, under which a customer reimburses the PTP for the costs of constructing a pipeline extension to connect the customer to the PTP's pipelines, is qualifying income because it is integral to the transportation oil, gas, and petroleum products. Amounts exceeding the costs of construction, however, do not qualify.

**PLR 200841017, released October 10, 2008.** Income from treasury locks and interest rate swaps used to minimize risk is qualifying income for a PTP primarily engaged in natural resource activities qualifying under section 7704.

**PLR 200827022, released July 4, 2008**. Income from providing drilling, well servicing/maintenance services, workover services, completion services, and other specialized services to companies owning oil and gas properties is qualifying income.

**PLR 200827014, released July 4, 2008.** Fees for fracturing and for removal and disposal or recycling of fluids generated by oil and gas wells constitute qualifying income.

**PLR 200821021, released May 23, 2008.** Sale of electrical power produced at a power plant fueled by qualifying natural resources ( natural gas, refined products, wood chips, coal, and geothermal steam) is not qualifying income, because, based on the legislative history, the conversion of a mineral or natural resource into electrical energy is *no*t "processing" within the meaning of section 7704(d)(1)(E).

## 2007

**PLR 200749012, released December 7, 2007.** Income from the distribution and marketing of propane to end users at the retail level constitutes qualifying income. However, the IRS views the income from rental of propane storage tanks as nonqualifying.

**PLR 200740010, released October 5, 2007**. Income earned by a PTP's subsidiaries from operating pipelines and terminals owned by third parties is qualifying income.

**PLR 200728025, released July 13, 2007.** An LLC electing partnership taxation was a holding company formed to invest in fixed income assets consisting primarily of mortgage-backed securities, residential mortgage-backed securities, loans, and trust preferred securities held by subsidiaries which were collateralized debt obligation (CDO) issuers. The LLC would hold a majority of the equity interests in the CDO issues and might own some debt securities in the CDO issuers, which were usually corporations. These equity and debt interests might be held directly or through one or more corporate foreign holding companies. The subsidiaries meeting the applicable Code requirements could be classified as a controlled foreign corporation (CFC) or passive foreign investment company (PFIC); and the LLC could elect to treat those that were PFICs as qualified electing funds (QEFs). The CDO issuers generated primarily interest income (which, with respect to the foreign entities qualifies as PFIC income and is subpart F income under section 954(c)(1)(A)). A majority of the LLC's cash flow would be distributions it received as an equity holder from its subsidiaries; however under their governing agreements the subsidiaries might have to use their cash flow to pay debt in some years, leaving the LLC with taxable income exceeding distributions. The LLC represented that it was not an investment company under the 1940 Investment Company Act. After an analysis of section 7704, the RIC rules in section 851, and the applicable rules relating to taxation of foreign subsidiaries, the IRS ruled that the LLC's income from subsidiaries which were corporations for federal income tax purposes would be "qualifying income under sections 851(b)(2)(A) and 7704(d)(4) without regard to whether the income has been distributed and without regard to whether the income results from a subpart F or QEF inclusion, or is income in excess of cash distributions." The IRS cautioned that this ruling was dependent on the truth of the LLC's representation that it was not an investment company under the 1940 Act.

**PLR 200722007, released June 1, 2007**. A limited partnership contemplated issuing an IPO and becoming a PTP. Limited partnership interests in the prospective PTP were held by "qualified institutional buyers," as defined in Rule 144A of the Securities Act of 1933, and by "accredited investors," as defined in Rule 501(a) of the Securities Act. Some limited partnership interests were also sold outside the U.S. under Regulation S of the Securities Act. The partnership invested and would continue to invest the majority of its assets in the equity of a substantial number of foreign entities which would be treated as corporations for U.S. tax purposes and would issue collateralized debt obligations (CDOs). CDOs generate mostly interest income, which constitutes foreign personal holding company income under § 954(c)(1)(A) and is subpart F income under § 952(a)(2). The subsidiaries would be classified as CFCs or PFICS depending on percentage of ownership. The partnership represented that it is not required to register under the Investment Company Act of 1940, a "material representation upon which this ruling is based."

The PLR concluded that amounts included in the income of the partnership from its subsidiaries under §951(a)(1)(A)(i) and § 1293(a) (which under §851(b) are treated as dividends) would be treated as qualifying income under § 851(b)(2)(A) and § 7704(d)(4), without regard to whether or the extent to which subsidiaries made distributions to the partnership.

**PLR 200718005, PLR 200718006, PLR200718007, PLR 200718009, and PLR 200718010, released May 4, 2007**. In each of these five PLRs, the PTP requesting a ruling is engaged in processing, packaging, and marketing lubricating oil. By purchasing highly refined petroleum base oils from various refineries and then blending and processing them into lubricating oils, which it then packages and markets to its customers. The PLRs each conclude that the income derived by the PTP from the processing of petroleum base oils into lubricating oils is qualifying income under §7704(d)(1)(E).

**PLR 200712002, released March 23, 2007.** For a PTP providing integrated terminaling, storage, and related services to companies engaged in distribution and marketing of refined products and crude oil, 1) income derived from injection of additives and dyes into and blending of biodiesel and ethanol with, refined petroleum products and 2) income derived from operation of a refined products terminal and refined products pipeline owned by others are both qualifying income under §7704.

## 2006

**PLR 200638018, released September 22, 2006**. The ruling was requested by a PTP owing all, or a partial interest in, refined product terminals and a barrel refined product terminal serving a refinery. It earns income by charging customers a per barrel or per gallon terminaling fee for receiving refined products into the terminal and transferring them from the terminal to trucks, barges, or pipelines, and also by charging customers a fee to inject additives or blend ethanol with the fuel. It also operates three pipelines. It owns an undivided interest in one; owns a partial interest in the company on behalf of whom it operates the second; and operates the third on behalf of a company which is partly owned by a related party. The PTP's income from injecting additives into and blending ethanol with the fuel in the product terminal facilities, as well as its income from the operation of the three pipelines, are qualifying income within the meaning of section 7704(d)(1)(E).

**PLR 200635008, released September 1, 2006.** A PTP principally engaged in the processing, storage, wholesale marketing, and transportation of crude oil, natural gas, and derivative products enters into treasury locks to minimize the risk of interest rate changes between its decision to issue debt and the actual issuance. It also engages in interest rate swaps when it determines that market conditions favor paying a floating rate when it has fixed rate debt outstanding (or vice versa). The income from the treasury lock and interest rate swap transactions is qualifying income within the meaning of §§ 7704(d)(1) and 1.7704-3(a)(1).

## 2005

**PLR 200551002, released December 23, 2005**. Income from transporting LNG and crude oil under charter agreements is qualifying income.

## 2004

**PLR 200422023, released May 28, 2004**. Income from operating petroleum product terminal facilities and pipelines transporting NGLs and refined products is qualifying income.

**PLR 200411018, released March 12, 2004**. A PTP's interest income from the debt obligations of its operating partnership's directly and indirectly owned companies is qualifying income.

## 2003

**PLR 200345019, released November 7, 2003**. A PTP owns an interest in an LLC treated as a partnership. The LLC leases property to an unrelated corporation under an agreement. The PTP's distributive share of the income received by the LLC under the agreement is qualifying income.

## 1999

**PLR 199932024, released August 13, 1999**. Income and gains from the sale of glued wood products, made from the PTP's own timber and timber acquired by others, are qualifying income.

**PLR 9904025, released January 29, 1999**.  Income and gains from storing natural gas in the PTP's gas storage facilities and its pipeline system incident to the provision of natural gas pipeline transportations qualifying income.