Internal Revenue Service

Number: **201723004**
Release Date: 6/9/2017

Index Number: 7704.03-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:01
PLR-125167-16

Date:
January 25, 2017

Legend

X =

State =

Dear :

This responds to your letter dated August 12, 2016, and subsequent correspondence submitted on behalf of X, requesting a ruling under section 7704(d)(1)(E) of the Internal Revenue Code.

FACTS

According to the information submitted, X is a publicly traded limited partnership organized under the laws of State. X, through direct and indirect wholly owned and disregarded subsidiaries, is engaged in certain midstream operations, and as part of that business, X plans to provide fluid waste handling, treatment, and disposal services to customers engaged in the exploration for, and development and production of, oil and natural gas.

As part of its fluid management services, X will supply and transport drilling and fracturing fluids, including fresh water, brine, and other injectants, for use in drilling and hydraulic fracturing. The fresh water supply will be obtained by X from through water wells drilled by X, third-party landowners, upstream, lease rights, and/or government entities and treatment facilities. X plans to transport the fluids to producers via temporary and permanent pipelines. These pipelines will be used exclusively to transport water to oil and gas well sites. X will design and develop the distribution pipelines based on the specific needs and location of each group of oil and gas wells served. During the provision of these services, X's personnel will remain present at, or will remotely monitor, both the fluid source and the well site to oversee the process and ensure proper functioning of the pipelines and related equipment. Lastly, X may transport fluids to producers using trucking services provided by third parties.

With respect to its freshwater services, X will remove freshwater from its sources, transferring the water to above-ground storage tanks or to storage ponds. Because the rate of water removal from the storage tanks and ponds may exceed the rate at which water enters the storage tanks and ponds, X's personnel will provide monitoring services, onsite or offsite, on a real-time basis to ensure that equipment is functioning properly and maintaining proper flow rates.

X will also provide inter-well site transportation via pipelines when requested by its oil and natural gas producer customers. These transfer services include: (a) transporting fluids between producers' well sites on a single producing property, (b) transporting fluids between frac tanks for a producer at a single well site, and (c) transporting fluids for a producer between one or more well sites and/or a treatment plant.

X will also treat and dispose of flowback, produced water, and other drilling production wastes. Flowback and produced water will be transported by dedicated pipeline or truck to X's salt water disposal (SWD) wells. X's personnel will coordinate with oil and gas operators to develop pipelines at one or several groupings of well site production tanks or centralized tank batteries. X's operation may include fluid treatment to allow the recycled fluids to be used in future drilling and fracturing operations.

X will also provide hydrocarbon remediation services. As a part of these services, X will remove hydrocarbons from the drilling waste at its facilities during the waste treatment and disposal process and sell such reclaimed hydrocarbons.

X makes the following representations:

1. X will supervise, direct, and control personnel for its fluid management, transportation, disposal, and storage services. These activities require personnel with specialized knowledge, unique training, and experience such as training in fluid pressure monitoring, spill prevention, and operating pumps critical to the operation of X's and disposal facilities.
2. The provision of fluids and water transfer services are essential to the completion of oil and natural gas drilling and fracturing operations.
3. Processing, treatment, and disposal of flowback fluids and produced water is required in order to comply with governmental regulations and industry standards.
4. X's fluid management services require daily involvement and will be performed on an ongoing basis throughout the exploration and production life cycle of each

producing property. X's disposal facilities and related service equipment will be staffed and are equipped to allow for remote monitoring capabilities.

LAW & ANALYSIS

Section 7704(a) provides that, except as provided in section 7704(c), a publicly traded partnership will be treated as a corporation.

Section 7704(b) provides that the term "publicly traded partnership" means any partnership if (1) interests in that partnership are traded on an established securities market, or (2) interests in that partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

Section 7704(c)(1) provides that section 7704(a) does not apply to a publicly traded partnership for any taxable year if such partnership meets the gross income requirements of section 7704(c)(2) for the taxable year and each preceding taxable year beginning after December 31, 1987, during which the partnership (or any predecessor) was in existence.

Section 7704(c)(2) provides, in relevant part, that a partnership meets the gross income requirements of section 7704(c)(2) for any taxable year if 90 percent or more of the gross income of the partnership for the taxable year consists of qualifying income.

Section 7704(d)(1)(E) provides that the term "qualifying income" includes income and gains derived from the exploration, development, mining or production, processing, refining, transportation (including pipelines transporting gas, oil, or products thereof), or the marketing of any mineral or natural resource (including fertilizer, geothermal energy, and timber).

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that gross income derived by X from its fluid management, inter-well transfer , and disposal services constitutes qualifying income within the meaning of § 7704(d)(1)(E), regardless of whether the income is earned directly by X and its subsidiaries or through its distributive share of a joint venture. This ruling is not applicable to any income derived by X from the delivery and transfer of water, brine, or other injectants, including recycled produced water, where X does not also collect and clean, recycle, or otherwise dispose of produced water and drilling production waste after use.

In addition, income derived by X from its hydrocarbon remediation services performed as part of the disposal process constitutes qualifying income within the meaning of § 7704(d)(1)(E) so long as X does not sell recovered hydrocarbons to end users at the retail level.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed as to whether X meets the 90 percent gross income requirement of § 7704(c)(1) in any taxable year for which this ruling may apply.

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

This ruling is directed only to the taxpayer requesting it. However, in the event of a technical termination of X under § 708(b)(1)(B), the resulting partnership may continue to rely on this ruling in determining its qualifying income under § 7704(d)(1)(E). Section 6110(k)(3) of the Code provides that this letter may not be used or cited as precedent. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Laura C. Fields
Laura C. Fields
Senior Technician Reviewer, Branch 1
(Passthroughs & Special Industries)

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

cc: