NATIONAL ASSOCIATION OF
PUBLICLY TRADED PARTNERSHIPS

2014 ANNUAL MEETING

REPORT OF
THE REGULATORY COMMITTEE

TAX GUIDANCE AND ISSUES
IN THE PAST YEAR

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INTRODUCTION AND SUMMARY[1]

The year since the 2013 Annual Meeting has been an unusually active one in the area of tax guidance affecting MLPs. Over the course of the year the IRS and the Treasury Department:

- Finalized last year's proposed regulations generally governing the net investment income tax (NIIT). At the same time, they issued new proposed regulations providing rules for calculating how much of a non-passive partner's gain or loss on the disposition of a partnership interest is subject to the NIIT, and for the NIIT treatment of payments from partnerships to partners under section 707(c) and section 736.
- Issued proposed rules providing that when there is a technical termination of a partnership under section 708(b)(1)(B), amortization of start-up and organizational expenditures must continue on the same schedule as before the termination rather than be deducted immediately.
- Issued proposed regulations under I.R.C. section 752 intended to revise the rules for allocating recourse liabilities when there is overlapping economic risk of loss, and also provided clarifications to the related party rules.
- Issued proposed changes to the basis allocation regulations to implement section 704(c)(1)(C), which was added to the tax code as part of the American Jobs Creation Act of 2004. The rules govern contributions of built-in loss property to partnerships and are meant to ensure that only contributing partners can take into account built-in losses. The proposed regulations also modify the basis allocation rules under sections 743 and 734.
- Issued proposed regulations amending the rules for disguised sales under section 707, in particular the rules governing preformation capital expenditures; and proposed regulations under section 752 that would adopt a six-factor test for assigning recourse liability to a partner.
- Issued 31 private letter rulings interpreting "qualifying income" under section 7704.

IRS and Treasury also surprised the MLP community by deciding in March, without prior notice or a public announcement, to impose a moratorium on new private letter rulings under section 7704 while a working group developed standards for rulings in nontraditional areas.

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[1] This report is for informational purposes only and should not be construed as tax advice.

DEVELOPMENTS ON ISSUES FROM PREVIOUS YEARS

Net Investment Income Tax

One of the tax changes brought about by health care reform is the 3.8 percent tax on net investment income enacted as part of The Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152), which took effect on January 1, 2013. The provision, now section 1411 of the tax code, imposes a 3.8 percent tax on the "net investment income" (NII) of taxpayers with modified adjusted gross income of $250,000 (joint return) or $200,000 (single return). The tax is imposed on the lesser of NII or the amount of modified adjusted gross income (MAGI) that exceeds the threshold. For example, a single taxpayer with $190,000 of MAGI of which $50,000 was NII would pay no tax, while a single taxpayer with $225,000 of MAGI and $50,000 of NII would pay tax on $25,000 and one with $260,000 MAGI and $50,000 of NII would pay tax on $50,000.

"Net investment income" for purposes of this tax is defined as gross income from "interest, dividends, annuities, royalties, and rents" that are not derived in the ordinary course or a trade or business; *plus*

1. Income derived from a trade or business which is
   a. A passive activity for the taxpayer (i.e., the taxpayer is a passive investor and not an active participant in the business)—the regulations specify that passive activity status will be defined at the partner level under the passive loss rules of section 469; or
   b. The trade or business of a trader in financial instruments or commodities; *plus*
2. Net gain from the disposition of property other than property held in a non-passive trade or business—the regulations specify that this includes taxable gain from distributions that exceed the taxpayer's adjusted basis, and that the amount of net gain added to NII may not be less than zero; *minus*
3. Deductions properly allocable to the investment income or gain.

Applied to an investment in an MLP, this means that individual unitholders with MAGI over the threshold will have the 3.8% tax added to the tax they pay on their share of partnership income—but it will be their net income, which is generally much less than the distributions. The tax deferral on distributions applies to the NIIT as well (Shareholders of corporations, by contrast, will pay the tax on their entire dividend if they are over the MAGI thresholds). The 3.8% tax will, however, apply to the unitholder's gain when the units are sold, including the gain attributable to basis adjustments resulting from distributions.

The above applies only to passive investors, the public unitholders who play no role in the active management of the MLP. Active participants in an MLP (i.e., those for whom it is not a passive activity under section 469) who hold units will not be subject to this tax on their share

of income, and their gain on disposition of units will be treated differently. These unitholders recognize gain only to the extent of the net gain (or loss) which they would take into account if all property of the partnership were sold for fair market value immediately before the disposition of the units.

On November 30, 2012, the IRS and Treasury issued proposed regulations providing guidance on this new tax and its computation. The regulations stated as a general rule that NIIT regime will generally follow the existing income tax rules in determining whether there is taxable income. If gain or loss is deferred or not recognized under the income tax rules, for instance, that will be true under the NIIT rules as well, with exceptions when necessary to prevent circumvention of the NIIT. For MLP investors, the proposed regulations added detail to the basic mechanisms set out in the statute, including the continued deferral of tax on distributions and provided clarification on an ambiguity in the statutory language regarding disposition of partnership interests that had concerned NAPTP.

On December 2, 2013, the IRS and Treasury published final regulations which included a few changes and clarifications to the proposed provisions, as well as proposed regulations concerning the treatment of the sale or exchange of a partnership interest under section 1411. Among the changes made were the withdrawal of the provisions of the proposed regulations dealing with income from disposition of a partnership interest after a number of comments questioning the methodology and complexity of the rule for non-passive investors. The final regulations were accompanied by new proposed regulations covering this as well as some other partnership issues.

The proposed regulations provide a new calculation for calculating how much of the gain or loss to be recognized by a non-passive partner, who is disposing of a partnership interest, is attributable to partnership property the sale of which would generate income includable in determining NII. An optional simplified method that can be used in lieu of this calculation is provided as well. Additional rules are provided for deferred recognition transactions, computation of gain and loss for partners subject to basis adjustments, and required information disclosures and reporting.

The proposed regulations also provide rules for the NIIT treatment of payments from partnerships to partners under section 707(c) (guaranteed payments to partners made for services or for the use of capital) and section 736 (payments made by a partnership to a retiring partner or to a deceased partner’s successor in interest in liquidation of the partner’s entire interest in the partnership).

- Payments under section 707(c) are excluded from NII if they are made for services. If they are made for the use of capital, however, they are included in NII on the basis that they resemble interest and are treated as such in section 707(c) and other sections of the Code.

- The treatment of section 736(b) payments to retiring partners in exchange for partnership property is the same as that of partnership distributions: gain or loss recognized on these distributions is treated as gain or loss from the sale or exchange of the recipient's partnership interest. They will thus be included in NII. If payments are made over multiple years, they are treated as if all payments were made at the time that the liquidation of the partner's interest commenced.
- Under section 736(a)(1), if the amount of a liquidating distribution is determined by the partnership's income, it is treated as a distributive share of partnership income. Thus, all items of income, gain, and loss are taken into account according to the way they are generally treated for tax purposes in computing NII. Thus, if the distributive share includes, say, interest and dividend income, those will be included in NII, whereas business income, if the partner has a non-passive interest, would not.
- Under section 736(a)(2) if the amount of a liquidating distribution is made without regard to partnership income, it is treated as a section 707(c) guaranteed payment. Inclusion in NII will depend on whether the payment is made for services, for use of capital, or for property. Thus, it will be included in NII if paid for the use of capital, but will not if it is paid for services. If it is paid for property, it will be treated as gain or loss from the disposition of a partnership interest, which is generally included in NII.

In order to mesh with the final regulations, these proposed regulations will have the same effective date as the final ones. However, any provisions adopted when the proposed regulations are finalized that is stricter than the current version will only apply prospectively.

NEW PROPOSED REGULATIONS

Proposed Rules on Start-up and Organizational Expenditures after Technical Termination

On December 6, 2013 the IRS and Treasury issued proposed regulations (REG-126285-12) concerning the deductibility of start-up expenditures and organizational expenses for partnerships following a technical termination partnership under section 708(b)(1)(B). The regulations were issued to settle the question whether a technical termination allows immediate deduction of the portion of such expenses that remains unamortized.

Under the rules of section 708(b)(1)(B), a partnership is considered technically to be terminated if there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits within a 12-month period. Because their units are publicly traded, this may happen to MLPs. Treas. Reg. section 1.708-1(b)(4) provides that in the case of such a termination, the following is deemed to occur: first, the terminating partnership contributes all of its assets and liabilities to a new partnership in exchange for an interest in the new partnership. Immediately thereafter, the terminated partnership distributes interests in the new partnership to the purchasing partner and the other remaining partners in liquidation of the terminated

partnership, in proportion to their respective interests in the terminated partnership. This allows either the dissolution and winding up of the terminated partnership or, in the case of MLPs, the continuation of the business by the new partnership.

Section 195(b)(1)(A) limits the amount of startup expenditures that may be deducted in the year of a start-up to $5,000. Remaining expenses may be amortized over a 180 month period. Section 195(b)(2) provides that in any case in which a trade or business is completely disposed of by the taxpayer before the end of the amortization period, any deferred expenses attributable to the trade or business not yet allowed as a deduction by reason of section 195 may be deducted to the extent allowable under the loss rules of section 165. Section 709(b)(1)(A) provides similar rules for partnership organizational expenses.

The proposed regulations state that a new partnership formed due to technical termination under section 708(b)(1)(B) must continue amortizing the section 195 and section 709 expenses incurred by the terminating partnership using the same amortization period that the terminating partnership had adopted. According to the preamble, the proposed rules were issued to clarify whether a technical termination would allow a partnership to immediately deduct such expenses as provided in sections 195 and 709 for complete disposition of a trade or business (section 195) or liquidation of a partnership (section 709). The IRS notes that the rule adopted in the proposed regulations would align the amortization of start-up and organizational expense with the treatment of intangible property under section 197, as intended by Congress.

Once they have been published in final form, these regulations will apply to all technical terminations occurring on or after December 9, 2013.

Proposed Rules for Allocation of Recourse Liabilities of a Partnership and Special Rules for Related Persons

On December 13, 2013 the IRS and Treasury issued proposed regulations under I.R.C. section 752 [REG-136984-12] intended to clarify the rules for allocating recourse liabilities (liabilities for which at least one partner bears the economic risk of loss) when the economic risk of loss overlaps among partners.

Overlapping Liability

A partner's basis in his partnership interest is increased by his share of recourse liabilities. Section 752 provides that a partner's share of recourse liability equals the portion of the liability for which the partner or a related person bears the economic risk of loss. Often, however, more than one partner bears the economic risk of loss for the same liability, and it is unclear how the liability should be allocated among the partners.

The issue was addressed in the temporary regulations under section 752 that preceded the existing regulations by providing that if the aggregate amount of loss for which all partners are determined to be at risk exceeds the actual liability, then economic risk of loss for each partner would be determined by multiplying the amount of the actual liability by the ratio of the amount for which the individual partner is at risk to the aggregate amount for which all partners are at risk. This rule, however, was not included in the final regulations in order to keep them simpler.

According to the preamble of the proposed regulations, the IRS has decided that a rule is needed to clarify the situation of overlapping economic risk of loss, and that in this case clarification is more important than simplicity. The proposed regulations therefore re-adopt the rule from the temporary regulations.

Tiered Partnerships

The proposed regulations also address the allocation of liability in tiered partnerships. The current regulations provide that if an upper-tier partnership (UTP) owns (directly or indirectly) an interest in a lower-tier partnership (LTP), the amount of liability of the LTP that is allocated to the UTP equals 1) the amount of economic risk the UTP bears for the LTP's liabilities, plus 2) the amount of liabilities for which the partners of the UTP bear the economic risk of loss. The UTP's share of the LTP's liabilities is treated as a liability of the UTP for purposes of applying section 752 to the UTP's partners. Thus, a recourse liability of the LTP is allocated to the UTP if either that UTP, or one of its partners, bears the economic risk of loss for the liability.

The current regulations do not, however, address how a LTP liability should be allocated between a UTP and its partner when the partner is also a partner in the LTP and bears an economic risk of loss with regard to LTP's liabilities. The proposed regulations modify the existing tiered partnership rule to allocate the LTP liability directly to the partner, rather than to the UTP.

Related Party Rules

The proposed regulations make several clarifications to the related party rules:

- To the extent a corporation with a partnership owner is a lender or has a payment obligation with respect to a liability of that partnership, the rule that stock owned by a partnership is considered to be proportionately owned by its partners will not apply in determining whether a partner in the partnership is considered to own stock in the corporation.
- The current regulations provide that if more than one person is related to a partnership under the related party rules, the rules will be applied by treating the person as related only to the partner with whom there is the highest percentage of related ownership. If two or more partners have equal percentages and no partner has a greater percentage, liability will be allocated equally among the partners with equal percentages. At the

request of several commenters, the proposed regulations remove the greatest percentage rule and provide that if a person is a lender or has a payment obligation for a partnership liability and is related to more than one partner, those partners share the liability equally.

The "related partner exception" in the current regulations provides that persons owning interests directly or indirectly in the same partnership are not treated as related persons for purposes of determining the economic risk of loss borne by each of them for the liabilities of the partnership. A recent Tax Court case, *IPO II v. Commissioner*, 122 T.C. 295 (2004) has raised some uncertainty regarding the scope of the exception by being interpreted by some as applying it even when none of the related partners directly bears the economic risk of loss for a partnership liability. The proposed regulations provide that the related partner exception only applies when a partner bears the economic risk of loss for a liability of the partnership because the partner is a lender or has a payment obligation for the partnership liability.

Request for Comments: Liquidating Distributions of Tiered Partnership Interests

The preamble states that the IRS and the Treasury Department are considering the proper treatment of liabilities when a UTP (transferor) bears the economic risk of loss for an LTP liability and distributes, in a liquidating distribution, its interest in the LTP to one of its partners (transferee) but the partner does not bear the economic risk of loss for the LTP's liability. The IRS and the Treasury Department request comments on the timing of the liability reallocation relative to the transaction that causes the liability to change from recourse to nonrecourse.

These regulations will become effective on the date that final regulations are published.

Proposed Regulations on Partnership Basis Allocation Adjustments for Built-In Losses

On January 16, 2014 the IRS and Treasury issued proposed regulations (REG-144468-05) making changes to the basis allocation regulations to implement section 704(c)(1)(C), which was added to the tax code as section 833(a) of the American Jobs Creation Act of 2004 (AJCA). The rules govern contributions of built-in loss property to partnerships and are meant to ensure that only contributing partners can take into account built-in losses. The proposed regulations also amend the rules governing basis adjustments under sections 743(b) and 734 in accordance with sections 833(b) and (c) of the AJCA to prevent the inappropriate transfer of losses among partners.

Contributions of built-in loss property

The IRS and Treasury state in the preamble that they decided to model the rules on the rules governing basis adjustments under section 743(b), both because a built-in loss is similar to a section 743(b) adjustment in that both apply only to the partner in question, and because it is a simpler approach that is already familiar to partners, partnerships, and the IRS. However, because it was felt that some of the section 743(b) rules should not apply to a built-in loss, the

new regulations do not import the section 743(b) regulations wholesale but rather use the concepts in those regulations that are appropriate for built-in loss.

The proposed regulations define "section 704(c)(1)(C) property" as section 704(c) property (property contributed to a partnership) with a built-in loss at the time of contribution, and create the concept of a "section 704(c)(1)(C) basis adjustment." The section 704(c)(1)(C) basis adjustment is initially equal to the built-in loss associated with the section 704(c)(1)(C) property at the contribution and then is adjusted in accordance with the proposed regulations. The basis adjustment is unique to the contributing partner (referred to as the "section 704(c)(1)(C) partner") and does not affect the basis of partnership property or the partnership's computation of any item. The rules for the effect of the basis adjustment on the basis of partnership property; on calculation and allocation of items of income, gain, deduction, and loss; on adjustments to partners' capital accounts; on adjustments to the contributing partner's distributive share; and on the determination of the contributing partner's share of income, gain or loss from sale of the property are similar to the rules for section 743(b) adjustments in Treas. Reg. sections 1.743–1(j)(1) through (j)(3).

The proposed rules provide guidance on a number of related issues, including;

- Distributions of section 704(c)(1)(C) property by the partnership holding it to the contributing partner and to other partners, and of any property in complete liquidation of the contributing partner's interest.
- Transfer of the contributing partner's partnership interest: the transferee generally does not succeed to the basis adjustment. Rather, the share of the section 704(c)(1)(C) basis adjustment attributable to the interest transferred is eliminated. However, with some exceptions, this rule does not apply when the contributing partner transfers the partnership interest in a nonrecognition transaction.
- Transfer of the section 704(c)(1)(C) property by the partnership. In general, the contributing partner's section 704(c)(1)(C) basis adjustment is taken into account in determining the partner's share of gain or loss from the transfer. The partner will retain the adjusted basis in the replacement property in section 1031 transaction, stock in a section 355 transaction, an LTP interest in a section 721 transaction, or a new partnership in a technical termination.
- Reporting requirements for section 704(c)(1)(C) adjustments that are similar to those for section 743(b) adjustments.

Mandatory Basis Adjustments under Section 743 And 734

The proposed regulations generally restate the statute in sections 743(a) and (b) but provides additional guidance and clarification in several areas. These provisions require a partnership to adjust the basis of partnership property upon a sale or exchange of an interest in the partnership or upon the death of a partner if there is a section 754 election in effect, or if the partnership has a substantial built-in loss (more than ($250,000) immediately after the transfer.

Similarly sections 734 (a) and (b) require a partnership to adjust the basis of partnership property upon a distribution of partnership property to a partner if there is a section 754 election in effect or there is a substantial basis reduction (more than ($250,000) with respect to the distribution. Here, too, the proposed regulations generally follow the statutory provisions provide clarifications and guidance in various areas.

Section 755 Basis Allocation Rules:

Section 755(a) generally requires that any increase or decrease in the adjusted basis of partnership property under section 734(b) be: (1) allocated in a manner that reduces the difference between the fair market value and the adjusted basis of partnership properties, or (2) in any other manner permitted by regulations. Generally, section 755(b) requires a partnership to allocate increases or decreases in the adjusted basis of partnership property arising from the distribution of property to property of a like character to the property distributed. Section 755(c) was enacted in the AJCA as a result of the Joint Committee on Taxation Enron report and provides that in making an allocation under section 755(a) of any decrease in the adjusted basis of partnership property under section 734(b), no allocation may be made to stock in a corporate partner and any amount not allocable to stock for this reason must be allocated under section 755(a) to other partnership property.

The proposed regulations generally restate the statutory provisions of section 755(c) and provide rules applicable to an allocation of a downward adjustment in the basis of partnership property under sections 734(b) and 755(a). They provide that in making an allocation under section 755(a) of any decrease in the adjusted basis of partnership property under section 734(b), no allocation may be made to stock in a corporation or any related person that is a partner in the partnership. The proposed regulations also modify the basis allocation rules to prevent certain unintended consequences of the current basis allocation rules for substituted basis.

Other Provisions

The proposed regulations provide additional guidance on allocations resulting from revaluations of partnership property and amend various provisions to reflect the statutory change in the time for taxing precontribution gain from five years to seven. The preamble also discusses the issue of reverse section 704(c) allocations, and agrees that taxpayers should be able to use any reasonable method of allocation. However, Treasury and the IRS decline to adopt a default rule for allocating tax items because no single method is more appropriate than other methods. However, they are "considering providing examples of reasonable methods in future guidance" and therefore request comments on these and other methods for allocating tax items.

The proposed regulations will be effective for partnership contributions and transactions occurring on or after the date final regulations are published in the Federal Register. The proposed regulations under Treas. Reg. section 1.755–1(b)(5) will apply to transfers of partnership interests occurring on or after January 16, 2014.

Proposed Regulations on Partnership Disguised Sales of Property and Treatment of Partnership Liabilities

On January 30, 2014 the IRS and Treasury issued proposed rules (REG-119305-11) on disguised sales of property to or by a partnership under section 707 and on the treatment of partnership liabilities under section 752. The section 752 rules have engendered a good deal of discussion and controversy, as they take a different, and stricter, approach to allocating liabilities among partners, replacing an "ultimate liability" standard with a six-factor test.

Disguised Sale Rules

The changes in the disguised sale rules of greatest interest to MLPs concern the exception for "preformation capital expenditures." Under the current rules, reimbursements for certain capital expenditures incurred by a contributing partner during the two-year period preceding the contribution may be paid without being subject to treatment as a disguised sale. The amount of reimbursements for preformation capital expenditures is limited to 20 percent of the fair market value of the property at the time of contribution. The fair market value limitation, however, does not apply if the fair market value of the contributed property does not exceed 120 percent of the contributing partner's adjusted basis in the property.

The proposed regulations make three clarifications to the exception:

1) Under the current rules, it is unclear how the 20 percent limitation is calculated when multiple properties are contributed. The proposed regulations provide that the 20 percent limitation and the exception are calculated separately for each property contributed. Thus, the values of multiple properties contributed to a partnership would not be aggregated.
2) The proposed regulations clarify that the term "capital expenditures" has the same meaning as it has under the tax code and regulations, except that it includes capital expenditures that the taxpayer can (and does) elect to deduct as well as those that are required to be capitalized. This means that amounts giving rise to bonus depreciation deductions would be considered preformation expenditures. Deductible expenses that a taxpayer elects to capitalize, however, are not considered to be capital expenditures.
3) The proposed regulations provide that to the extent that a partner has funded a capital expenditure with a borrowing and the economic responsibility to repay the borrowing has shifted as a result of the property's contribution to a partnership, payments to the partner are not treated as reimbursements for preformation capital expenditures. Thus, reimbursements would be limited to the partner's share of the assumed liability. Some taxpayers had taken the position that a partner could finance capital

expenditures with a qualified liability and be reimbursed for those expenditures as preformation capital expenditures without triggering sale treatment.

Other provisions of the proposed regulations broaden the definition of which liabilities are "qualified" and thus excluded from disguised sale treatment; clarify that a reduction in a partner's share of liability will not be deemed to be made in anticipation of a contribution of property and thus treated as a sale (the "anticipated reduction" rule) if it is subject to the entrepreneurial risks of partnership operations; provide additional guidance regarding application of the section 707 rules to tiered partnerships; and apply the netting rules for increases and decreases in partnership liabilities under Treas. Reg. section 1.752–1(f) to determine the effect of a merger under the disguised sale rules.

Partnership Liabilities

As noted earlier, a partner's basis in his partnership interest is increased by his share of recourse liabilities. Section 752 provides that a partner's share of recourse liability equals the portion of the liability for which the partner or a related person bears the economic risk of loss. Under the existing regulations, a partner generally bears the economic risk of loss for a partnership liability to the extent the partner, or a related person, would be obligated to make a payment if the partnership's assets were worthless and the liability became due and payable.

The existing regulations thus have an "ultimate liability" test for allocating liability that assumes the worst case scenario, even when it is reasonably anticipated that the partnership will be able to meet the liability itself with its profits or capital. The IRS and Treasury were concerned whether this was appropriate and believed that some partnerships were incurring non-commercial obligations for the sole purpose of allocating liability to a partner. To address this concern, the proposed rules under section 752 adopt a six-factor test for assigning liability. The factors are intended to show that the terms of the payment obligation are reasonable and are not designed solely to obtain tax benefits.

The rule requires that 1) the partner or related person demonstrate sufficient net worth to satisfy the liability or be subject to reasonable restrictions on asset transfers for inadequate consideration; 2) the partner or related person periodically provide commercially reasonable documentation of its financial condition; 3) the obligation not end prior to the term of the partnership liability; 4) the obligor not be required to hold money or other liquid assets in an amount that exceeds its reasonable needs; 5) the partner or related person receive arm's length consideration for assuming the obligation; and 6) the partner or related person be contractually liable for the full amount of the liability.

In addition, the proposed regulations revise the anti-abuse rule under § 1.752–2(j) to address the use of intermediaries, tiered partnerships, or similar arrangements to avoid the bottom-dollar guarantee rules. They also change the rule in Treas. Reg. section 1.752–2(b)(1) to reduce the partner's payment obligation by the amount of any right to reimbursement from any

person, rather than only from another partner or related person or the partnership. Finally, the proposed regulations eliminate the "significant item method" and the "alternative method" as acceptable ways of determining a partner's interest in partnership profits for the purpose of allocating nonrecourse liabilities. They adopt an approach based on the liquidation value of the partner's interest in the partnerships compared to the total liquidation values of all partners' interests.

The proposed changes to the disguised sale rules would generally apply to transactions with respect to which all transfers occur after the effective date of final regulations. The liability allocation proposed rules would similarly only apply to liabilities assumed by a partnership after the date the regulations are published in final form

PRIVATE LETTER RULINGS

The PLR "Pause"

Until March 2014 the IRS continued to produce a steady stream of private letter rulings (PLRs) interpreting the qualifying income definition under section 7704(d). In March, however, the IRS instituted a moratorium on new PLRs under section 7704 without any formal announcement. Word of this "pause" reached the MLP community when tax professionals seeking rulings came up against it, and it was eventually confirmed by IRS and Treasury officials, in particular Curtis Wilson, IRS Associate Chief Counsel (Passthroughs and Special Industries) and Craig Gerson, Attorney-Advisor in Treasury's Office of Tax Policy.

The pause came about, as they have explained it, a very large number of rulings have been issued over the past two years that have been handled by various IRS attorneys. Many of the PLRs applied section 7704 to activities that had not come up before, in particular oilfield services and processing of petrochemical products. There was concern about ruling on new areas without guidelines to follow. The purpose of the pause is to allow a working group to develop such guidelines.

Because there is typically a few months' gap between the time a taxpayer receives a ruling and the time it is released to the public, new PLRs continued to be released after the pause began. At the end of April Curtis Wilson stated at a conference that, according to the BNA Daily Tax Report, "the Service is comfortable with its PLR program with respect to most types of publicly traded partnerships and would continue to issue letters to such taxpayers. He said the standards are also clear for 'down-the-middle' ventures in the oil and gas industry, including pipeline operators and drillers." Wilson said that the IRS would continue the pause on PLRs for oilfield service businesses, in particular those that support hydraulic fracturing, until it develops workable standards for publicly traded partnerships in the natural resources arena. He has also said that the working group has been talking to the IRS engineers that work in the oil and gas industry in order to better understand what specific terms such as "exploration" mean.

PLRs Released Since the Last Annual Meeting

A total of 29 qualifying-income PLRs were released in 2013, and 14 have been released so far in 2014. 31 PLRs have come out since last year's Annual Meeting. Oilfield services, particularly those involving frac fluid and liquid waste disposal, were the subject of the majority of PLRs; services to coal mining operations have also received favorable rulings. Other subjects include the processing of natural gas, NGLs, and derivative products into various petrochemicals; refinery services and products; non-petroleum resources such as nitrogen kaolin and bauxite, fertilizers, and sand; and sale of renewable fuel identification numbers.

The rulings since the last annual meeting are summarized below in chronological order. Summaries of and links to all qualifying-income PLRs since 1987 can be found in the Members' section of the NAPTP website, under Federal Affairs, at
http://www.naptp.org/Members/HistoricalRegulatory/PLRs/PLR_List.html.

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 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 201330026, issued April 18, 2013; released July 26, 2013. Sand and Other Products for Sale to Oilfield Service Companies.
A PTP's income from mining, processing, and marketing a redacted type of 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 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 201331002, issued April 16, 2013; released August 2, 2013. Liquid Urea for Fertilizer.
A PTP is 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 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. The partnership represented that these activities are integral to the exploration, production and development of minerals and natural resources. The IRS ruled 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).

PLR 201336016, issued May 7, 2013; released September 6, 2013. Fluids Management and Technology.
A corporation planned to form a PTP and contribute 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. The 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 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 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 will refine or process NGLs into 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 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 was due to volumes 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 201338035, issued May 9, 2013; released September 20, 2013. Providing Fracking Materials and Services.
The taxpayer planned to form a PTP that would provide 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. The PTP 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 would also earn income from hydrocarbon remediation services, removing hydrocarbons from drilling waste, and sale of reclaimed hydrocarbons (not to end-users at the retail level); and from miscellaneous other services. These included 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" would 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 201340011, issued June 26, 2013; released October 4, 2013. Processing, Marketing, Storing and Transporting Products.

This PLR provides limited information, 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.

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

The taxpayer, a limited partnership plans to 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 201346007, issued July 18, 2013; released November 15, 2013. Processing and Marketing Synthesis Gas and Methanol.

A limited partnership planned to become a PTP and 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 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 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 section 7704(d)(1)(E). However, income earned under contracts solely for storage capacity and connection equipment will not qualify.

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 plans 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 these 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 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 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 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 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).

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 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 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).

P**LR 201408025, issued November 13, 2013; released February 21, 2014. Mining and Processing an Unnamed Product**.

This PLR provides limited information as the product 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 ruled that income from the mining, processing, marketing, storage, and transportation of the product would be qualifying income under section 7704(d)(1)(E).

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

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. The PTP will also earn income from selling skim oil and similar hydrocarbons removed from drilling. 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 the supply of wastewater in the fracturing process; the disposal of flowback, produced water, pit water, drilling mud and other drilling and production wastes; and hydrocarbon remediation services is qualifying income under section 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 third parties 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 states 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 RINs and from fuel delivery services provided to customers engaged in the mining of natural resources (excluding any portion of such income derived from the sale of products to customers who are not engaged in exploration, drilling, production, or mining activities) is qualifying income under section 7704(d)(1)(E).

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

This PLR is provides limited information, as the services provided are redacted. The taxpayer is a partnership which plans to be listed and publicly traded. The partnership plans to acquire a business providing a full suite of redacted services 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 to customers engaged in the production, processing, and transportation of oil and natural gas would be qualifying income under section 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 the partnership's income earned from the supply of fresh water, the transportation of fracturing fluid to producers' well sites for use in exploration and production activities, and the transportation of fracturing flowback and produced water to disposal facilities owned by third parties is qualifying income under section 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 the PTP occasionally markets the sand directly to producers. The IRS ruled that the PTP's income from the mining, marketing, and transportation of frac sand to oilfield service companies and to customers engaged in the exploration and production of oil and natural gas for injection as a proppant in the fracturing technique for the production of oil and natural gas is qualifying income under section 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 section 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 contribute 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 vessels. 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 will be generally responsible for all aspects of the navigation, operation, and maintenance of the vessel, bear the risk of loss of the vessel, and be 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 section 7704(d)(1)(E) pursuant to the charters would be qualifying income within the meaning of section 7704(d)(1)(E).

PLR 201418921, issued October 25, 2013; released May 2, 2014, released May 2, 2014. Coal Mining and Energy Infrastructure Services.

A PTP's 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 section 7704(d)(1)(E).

PLR 201420012, issued August 30, 2013; released May 16, 2013. 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 redacted 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.