

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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, ID No.  
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Refer Reply To:  
CC:PSI:B03  
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Date:  
February 08, 2016

X =

Y =

State =

Dear :

This letter responds to a letter dated August 5, 2015, submitted on behalf of X by X's authorized representative, requesting a ruling under § 7704(d)(1)(E) of the Internal Revenue Code (Code).

**FACTS**

X is a State law corporation. X intends to form a State limited partnership, Y, interests in which may be sold in an initial public offering. X represents that Y will be engaged in the production, storage, transportation, and marketing of the nitrogen-based fertilizers ammonia, ammonium nitrate, ammonium nitrate-ammonia (ANA), urea (both granulated and in solution), and urea ammonium nitrate (UAN). X represents that these products are all direct application fertilizers. X further represents that Y will sell these products in bulk to customers operating in agricultural and non-agricultural industries.

**LAW**

Section 7704(a) provides that, except as provided in § 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 § 7704(a) does not apply to a publicly traded partnership for any taxable year if such partnership meets the gross income requirements of § 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 § 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).

The Conference Report accompanying the Omnibus Budget Reconciliation Act of 1987 states:

Income and gains from certain activities with respect to minerals or natural resources are treated as passive-type income. Specifically, natural resources include fertilizer, geothermal energy, and timber, as well as oil, gas or products thereof. For this purpose, fertilizer includes plant nutrients such as sulphur, phosphate, potash, and nitrogen that are used for the production of crops and phosphate-based livestock feed.

H.R. Rep. No. 495, 100th Cong., 1st Sess. 943 (1987), 1987-3 C.B. 946-47.

## CONCLUSION

Based solely on the materials submitted and the representations made, we conclude that income derived by Y from the production, storage, transportation, and marketing of ammonia, ammonium nitrate, ANA, urea (both granulated and in solution), and UAN to both agricultural and non-agricultural customers is qualifying income for purposes of §7704(d)(1)(E). This ruling only applies, however, to the extent that the products in question are of a grade that is consistent with industry standards for agricultural uses as a fertilizer and such product in the form sold is commonly sold and used as a fertilizer. For example, income with respect to the marketing of low density ammonium nitrate or ammonium nitrate solution is not qualifying. In addition, this ruling does not apply to retail sales made directly to end users.

Except as specifically provided, we express or imply no opinion as to 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 Y will meet the 90 percent gross income requirement of § 7704(c)(1) or whether any other type of income not addressed in this ruling is qualifying income under § 7704(d).

This ruling is directed only to the taxpayer requesting it. However, in the event of a technical termination of Y 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 it 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 representative.

Sincerely,

/s/

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

Enclosures (2)

Copy of this letter

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