July 31, 2015

CC:PA:LPD:PR (REG-132634-14)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Proposed Treasury regulations section 1.7704-4

Dear Sir or Madam:

Financial Executives International and the U.S. Chamber of Commerce appreciate the opportunity to comment on proposed Treasury regulations section 1.7704-4.

Financial Executives International is the leading advocate for the views of corporate financial management. Its more than 10,000 members hold policy-making positions as chief financial officers, treasurers, and controllers at companies from every major industry. FEI enhances member professional development through advocacy, peer networking, career management services, conferences, research, and publications.

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system.

The proposed regulations provide guidance on the definition of qualifying income derived from activities involving natural resources for purposes of Internal Revenue Code section 7704 ("section 7704"). We generally applaud and encourage efforts by the Treasury and the Internal Revenue Service ("IRS") to provide tax guidance. Appropriate guidance provides clarity and reduces the administrative burdens of taxpayers and the IRS in applying the tax rules.

We do not express an opinion on the substance of these proposed rules. Undoubtedly, organizations and entities more focused on the taxation of publicly traded partnerships and natural resources will provide you with insightful comments on the substantive rules. Rather, our organizations are more concerned about the implications of the transition rules.

The proposed regulations would provide a ten-year grandfather rule for certain existing publicly traded partnerships that do not meet the newly promulgated standards if, prior to May 5, 2015 (the date the proposed regulations were issued), (1) the IRS had issued a private letter ruling to the partnership or (2) the partnership had qualifying income under the statute as "reasonably interpreted" by the taxpayer.

Specifically, we are concerned about the precedent of revoking private letter rulings and upsetting tax positions based upon a sound reading of the law. We applaud the issuance of general guidance, and wish the Treasury and IRS could promulgate more. But we understand that, absent unlimited resources and time, not all tax issues can be resolved by general guidance. Thus, we believe the private letter ruling process is an appropriate way to provide assurances to taxpayers as to the proper tax treatment of major transactions. We believe that taxpayers and the IRS take the private letter ruling process seriously. The process allows the Service to deliberate fully before deciding whether to issue a ruling, and to caveat or limit the applicability of a ruling. Absent a change or misrepresentation of the facts underlying a ruling, a change in law by Congress, or a clear mistake by the IRS in applying the law, taxpayers have the right to expect a ruling to be honored.

If the IRS could revoke rulings by providing limited grandfather relief, taxpayers would have less faith in the ruling process going forward for fear that Treasury and the IRS could later "change its mind" and revoke a ruling retroactively. Practitioners asked to provide tax opinions on what appears to be well-settled law would have similar concerns. In short, the very confidence in the administration and fairness of the tax system would be shaken if it were possible that future unimagined administrative guidance could reach back and undo the tax effects of prior transactions, rulings, and analyses.

Similarly, Congress has expressed a view that Treasury regulations should not have retroactive effect. In 1996, Congress amended section 7805(b) to prohibit the issuance of retroactive regulations except in certain cases. Although the 1996 amendment to section 7805(b) does not apply to the proposed regulations, it does provide instructive policy guidelines for when retroactivity may be appropriate. Such instances include regulations issued promptly after enactment of the underlying statutory provision or to prevent abuse. These proposed regulations satisfy neither requirement. The regulations are being promulgated decades after the enactment of section 7704, and there can be no abuse with respect to transactions the IRS has already reviewed favorably in the private ruling process.

There can be no more significant instance that calls for prudence than the current case. The issue at hand is not merely whether or when an item is includible in income or deductible. The issue at hand is the very tax status of entities that have attracted billions of investment dollars based, at least in part, on the tax status of the entity. Some taxpayers formally have asked the IRS to examine these transactions and have received favorable responses. Other taxpayers have looked to responsible tax practitioners (who themselves analyzed IRS ruling policy) to provide them guidance as to the appropriate treatment of their structures. To cast these rulings and opinions aside is inappropriate and unfair. We have already seen the devastating financial effect on the possible application of the proposed regulations with its ten-year grandfather rule on some publicly traded partnerships. We fear that the value of future transactions could be discounted if there is uncertainty as to the private letter rulings or well-reasoned tax opinions underlying the transactions.

We believe that Treasury and the IRS have the right to re-examine its positions, particularly in the face of evolving market developments. However, we believe rulings and well-reasoned opinions issued based on a careful examination of the law and underlying facts at the time of the issuance should be respected. Treasury and the IRS have provided similar permanent grandfather relief in other instances (e.g., including recently with respect to FATCA withholding requirements). Thus, we respectfully ask Treasury and the IRS to reconsider its position on the insufficient transition rules provided in the proposed regulations under section 7704.

Thank you for your attention to this important matter. Please do not hesitate to contact Karen Lapsevic, Director, Government Affairs, Financial Executives International at (202) 626-7809 or Caroline Harris, Chief Tax Policy Counsel and Executive Director of Tax Policy, U.S. Chamber of Commerce at (202) 463-5406 if you have any questions or comments regarding this submission.

Sincerely,

Financial Executives International

U.S. Chamber of Commerce

cc:

The Honorable Mark Mazur
Assistant Secretary (Tax Policy)
Department of the Treasury

Emily S. McMahon
Deputy Assistant Secretary
Department of the Treasury

Thomas West
Tax Legislative Counsel
Department of Treasury

Craig Gerson
Attorney Advisor
Department of the Treasury

Hannah Hawkins
Attorney Advisor
Department of the Treasury

The Honorable William J. Wilkins
Chief Counsel
Internal Revenue Service

Erik Corwin
Deputy Chief Counsel
Internal Revenue Service

Curtis Wilson
Associate Chief Counsel (P&SI)
Internal Revenue Service

Holly Porter
Branch Chief (P&SI)
Internal Revenue Service

Caroline Hay
Office of Chief Counsel (P&SI)
Internal Revenue Service