

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Date:  
December 02, 2011

Legend:

X =

State =

Date =

Dear :

This letter is in response to your letter, dated September 15, 2011, on behalf of X, seeking a ruling concerning the qualified income exception to the publicly traded partnership under section 7704 of the Internal Revenue Code.

Facts

Based on the materials submitted, we understand that X, organized under the laws of State and as of Date, is a publicly traded partnership within the meaning of section 7704(b) of the Code. X's business is the production of fertilizer. The fertilization production plant utilizes a gasification process to produce ammonia, some of which is further processed into urea ammonium nitrate (UAN) fertilizer. The primary feedstock for X's gasification process is petroleum coke, a coal-like substance produced as a byproduct of petroleum refining. X gets most of its petroleum coke from an adjacent refinery. In the course of the fertilization production process, hydrogen is produced as a by-product. X has entered into a services agreement with the adjacent refinery; whereby both agree provide each other with excess hydrogen, steam and other

products, to promote efficient operation of each facility. X is not obligated to provide any hydrogen to the other refinery unless X has excess hydrogen. Under the agreement, the transfers of hydrogen between the parties are netted and each party makes payments only to the extent that the hydrogen it receives during a given month exceeds the hydrogen it supplies during that same month. Thus, X may derive gross income from the sale of hydrogen in some months.

### Law and Analysis

Section 7704(a) provides that a publicly traded partnership shall 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 partnerships are readily tradable on a secondary market (or the substantial equivalent thereof).

Section 7704(c)(1) provides that section 7704(a) shall not apply to any publicly traded partnership for any taxable year if such partnership met the gross income requirements of section 7704(c)(2) for such 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) explains that a partnership meets the gross income requirements of section 7704(c) for any taxable year if 90 percent or more of the gross income of such partnership for such taxable year is qualifying income.

Section 7704(d)(1)(E) provides that the term qualifying income, among other things, income or 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 or timber).

### Conclusion

Based solely on the materials submitted, we conclude that the income derived by X from the sale of excess hydrogen is qualifying income within the meaning of section 7704(d)(1)(E).

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of this case under any other provision of the Code. Specifically, we express or imply no opinion as to whether X is taxable as a partnership for federal tax purposes.

Pursuant to the power of attorney on file with this office, a copy of this letter will be sent to your authorized representative.

This ruling is directed only to the taxpayer who requested it. According to section 6110(k), this ruling may not be used or cited as precedent.

Sincerely,

David R. Haglund  
David R. Haglund  
Chief, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for section 6110 purposes

cc: