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Person To Contact:
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Date:
December 07, 2011

LEGEND

X =

State =

a =

Dear :

This letter responds to a letter from your authorized representative dated November 15, 2011, and subsequent correspondence, submitted on behalf of X, requesting a ruling concerning the qualifying income exception to the publicly traded partnership rules of § 7704 of the Internal Revenue Code.

X is a limited partnership organized under the laws of State. X, through affiliated operating limited partnerships, limited liability companies or disregarded entities, will earn income from sources that include the extractive logistics business and the refined products blending business.

X's gross income from the extractive logistics business will be derived from delivery and sale of refined petroleum products (principally diesel fuel and lubricating oil), antifreeze, methanol and other chemicals to customers engaged in drilling, exploration and production, and mining activities at the site of such activities, including real-time online reporting of the fuel deliveries; on-site refueling of customers' oil and gas drilling, exploration and production, and mining equipment; removal, recycling, and disposal of used oil, lubricants or other fluids and non-hazardous waste from drilling and mining sites; maintenance and remote monitoring of drilling rig equipment, providing real-time online alerts when there are critical equipment malfunctions or maintenance is required and maintaining a log of all recommendations and actions; inspecting customers' drilling and mining equipment and analysis of used lubricants to ensure optimal equipment performance and to maximize equipment life, including through the use of an optical device known as a borescope to capture digital images of internal components which are then analyzed to provide specific service recommendations to the customer; provision of storage tanks and other equipment to customers on a monthly fee basis (though in most cases X provides on-site fuel and lubricant storage tanks without charge); and in a contemplated expansion of the existing extractive logistics business, supply and/or transportation of fracturing fluid to well sites, supply (with or without a separately stated charge) of "frac tanks" to store fracturing fluid and production fluid and flowback at the well site, removal of the production fluid and flowback generated in the fracturing process, and the disposal or treatment of the production fluid and/or flowback so it can be re-used or disposed of consistent with environmental regulations.

X represents that the extractive logistics services provided by X are integral to the exploration, production and development of oil, gas and coal resources, because the exploration, development and production of oil, gas and coal resources would be significantly curtailed in the absence of such services. X further represents that approximately a% of the extractive logistics services gross income is currently attributable to drilling and well services with the remainder attributable to conventional profit on the sale of fuel and fluids. X also represents that the substantial majority of the vehicles used to provide the extractive logistics services are specially designed and custom-built to deliver products to above-ground tanks and other non-conventional delivery points in remote locations and that substantially all of the use of those vehicles is to deliver products to customers who are engaged in drilling, exploration and production, or mining activities. Those vehicles are ill-suited for (and normally not used for) more conventional types of fuel and lubricant deliveries (e.g., deliveries to retail gas stations).

X's gross income from the refined products blending business will be derived from blending and sale of private label automotive lubricants, as well as the sale of branded lubricants and related products, to automotive dealerships, "quick lube" stores and commercial and industrial end users; in a contemplated expansion of the business described immediately above, blending and storing (at terminals) lubricants owned by third parties, which third parties will sell the lubricants to their own customers; and blending and sale of marine lubricants to major oil companies for resale to the major oil companies' customers and delivery of lubricants by vessel to the customers of the major oil companies.

Section 7704(a) provides generally that a publicly traded partnership shall be treated as a corporation.

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

Section 7704(c)(1) exempts from treatment as a corporation any publicly traded partnership for any tax year if the partnership meets the gross income requirements of § 7704(c)(2) for that year and each preceding tax year beginning after December 31, 1987, during which the partnership (or any predecessor) was in existence. Section 7704(c)(2) provides that a partnership meets the gross income requirements of § 7704 for any tax year if 90% or more of the partnership's gross income for that year consists of qualifying income.

Section 7704(d)(1)(E) defines "qualifying income" to include 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) industrial source carbon dioxide, or the transportation or storage of any fuel described in subsection (b), (c), (d), or (e) of § 6426, or any alcohol fuel defined in § 6426(b)(4)(A) or any biodiesel fuel as defined in § 40A(d)(1),

The Senate Report accompanying the Technical and Miscellaneous Revenue Act of 1988 states:

> With respect to marketing of minerals and natural resources (e.g., oil and gas and products thereof), the Committee intends that qualifying income be income from marketing at the level of exploration, development, processing or refining the mineral or natural resource. By contrast, income from marketing minerals and natural resources to end users at the retail level is not intended to be qualifying income. For example, income from retail marketing with respect to refined petroleum products (e.g., gas station operations) is not intended to be treated as qualifying income.

S.Rep. No. 445, 100th Cong., 2nd Sess. 424 (1988).

Based solely on the facts submitted and representations made, we conclude that X's gross income from (1) the extractive logistics business (excluding any portion of such income derived from the delivery or sale of products to customers who are not engaged in drilling, exploration and production, or mining activities) and (2) the refined products blending business (excluding any portion of such income derived from the delivery or sale of products to end users of the products) is qualifying income within the meaning of § 7704(d)(1)(E).

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts 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. In addition, 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. To the extent that X's gross income from its extractive logistics business is not attributable its customers' § 7704(d)(1)(E) activities (i.e., to activities of the customer, such as drilling, exploration and production, or mining of a mineral or natural resources, that would generally be expected to produce gross income that is qualifying income under § 7704(d)(1)(E) regardless of the customer's Federal tax classification), this letter ruling will not apply in determining whether the income that may be derived by X from such other uses constitutes qualifying income under § 7704(d)(1)(E). For purposes of our ruling regarding the extractive logistics business and the preceding sentence, X's "customers" include mine operators to which X makes sales or deliveries pursuant to buy-back agreements with lubricating oil suppliers that call for part, or all, of the payment to X to be made by the supplier. However, examples of such gross income from the extractive logistics business not attributable a customer's § 7704(d)(1)(E) activities include, but are not limited to, delivery and sale of refined petroleum products and antifreeze to farms and construction sites.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2011-1, 2011-1 I.R.B. 1, 50. However, when the criteria in section 11.06 of Rev. Proc. 2011-1, 2011-1 I.R.B. 1, 50 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent. Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure (2)
Copy of this letter
Copy for § 6110 purposes

cc: