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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-152307-12

Date:
May 09, 2013

X =

Y =

State =

Dear :

This letter responds to a letter dated December 7, 2012, and subsequent correspondence, submitted on behalf of X by X's authorized representatives, requesting a ruling concerning the qualifying income exception to the publicly traded partnership rules of § 7704 of the Internal Revenue Code.

FACTS

X is a limited liability company organized under the laws of State. X intends to form Y under the laws of State and cause Y to become a publicly traded partnership within the meaning of § 7704(b). X represents that Y will earn income by providing services to oil and natural gas producers critical to the producers' ability to retrieve otherwise inaccessible oil and gas reserves. Specifically, Y will earn income by providing essential fluid, solids, and other oilfield waste handling, treatment, and disposal services necessary for its customers' use of the fracturing technique of oil and natural gas extraction. X intends that Y provide such services through affiliated operating limited partnerships, limited liability companies, or disregarded entities.

Fracturing is a technique by which fluids are pumped into an oil or gas well at high pressure to fracture geologic formations and open up pathways for the oil or gas to flow up for extraction. Y will earn fees from the supply of water, chemicals, and other solutions used in the fracturing process. Y will provide transportation services for those

fluids via trucks, tanks, and, in some cases, pipelines. Y also will provide heating services with respect to such fluids using superheaters and hot oilers. In addition, Y will treat and dispose of completion fluids, drilling muds, drill cuttings, contaminated soil, tank bottoms, produced water, pit water, fracturing fluid and flowback which result from the use of the fracturing process in compliance with environmental regulations. Y will also remove and treat fluids used to wash and remove debris from containers, trucks, and equipment used by the oil and gas producers.

In addition to its provision of fluids and waste removal, treatment, recycling, and disposal services, Y will earn income from hydrocarbon remediation services. Y will remove such hydrocarbons from drilling waste at its treatment facilities during the waste treatment and disposal process. Y will then sell such reclaimed hydrocarbons on relevant markets. X represents that Y does not intend to market reclaimed hydrocarbons to end users at the retail level and, to the extent that Y earns income from the marketing of reclaimed hydrocarbons to end-users at the retail level, Y will treat such income as non-qualifying income under § 7704(d)(1)(E).

X also represents that Y will provide what it refers to as further “miscellaneous services” related to and in support of its primary fluid handling business. Y will earn income from the provision of refined fuels, such as diesel, to oil and natural gas producers for use in their exploration and production activities. X represents that Y does not intend to provide refined fuels to end-users at the retail level, and, to the extent that Y earns income from the provision of refined fuels to end users at the retail level, Y will treat such income as non-qualifying income under § 7704(d)(1)(E). Furthermore, to support this business, Y will design, own, manage, and operate rail and rail transportation assets. Y also will design, develop, own, operate, license and manage communications technology which will provide remote monitoring capabilities to oil and natural gas producers and early detection of problems with the pumps and recovery facilities used in the production activities. Finally, because oil and natural gas companies as well as oil and gas pipeline operators are required by law at both the federal and the state level to inspect their oil and gas pipelines and gathering systems on a regular basis to protect the environment and ensure public safety, Y will provide infrastructure inspection services.

LAW

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) interest in that partnership are readily tradable on a secondary market (or substantial equivalent thereof).

Section 7704(c)(1) provides that § 7701(a) shall not apply to any publicly traded partnership for any taxable year if such partnership met the gross income requirements of § 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 § 7704(c)(2) 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" includes 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).

The Conference Report accompanying the Omnibus Budget Reconciliation Act of 1987, in discussing the type of qualifying income described in § 7704(d)(1)(E), provides the following:

> 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, oil, gas, or products thereof means gasoline, kerosene, number 2 fuel oil, refined lubricating oils, diesel fuel, methane, butane, propane, and similar products which are recovered from petroleum refineries or oil field facilities. Oil, gas, or products thereof are not intended to encompass oil or gas products that are produced by additional processing beyond that of petroleum refineries or field facilities, such as plastics or similar petroleum derivatives. Income of certain partnerships whose exclusive activities are transportation and marketing activities is not treated as passive-type income. For example, the income of a partnership whose exclusive activity is transporting refined petroleum products by pipeline is intended to be treated as passive-type income, but the income of a partnership whose exclusive activities are transporting refined petroleum products by truck, or retail marketing with respect to refined petroleum products (e.g., gas station operations) is not intended to be treated as passive type income.

H.R. Rep. No. 495, 100th Cong., 1st Sess. 943 (1987), 1987-3 C.B. 226-227.

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

> 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 oil and gas. 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., 2d Sess. 424 (1988).

CONCLUSION

Based solely on the facts presented and representations made, we conclude that Y's gross income from the removal, treatment, recycling, and disposal of fracturing flowback, produced water, and other residual waste products generated by oil and gas wells during the fracturing process is qualifying income within the meaning of § 7704(d)(1)(E).

We further conclude that the income derived from the marketing and distribution of salvaged hydrocarbons, excluding income earned from marketing minerals and natural resources to end users at the retail level, will also constitute qualifying income within the meaning of § 7704(d)(1)(E).

Finally, we conclude that, to the extent the "miscellaneous services" described above are provided to customers engaged in drilling, exploration and production, transportation, or mining of a mineral or natural resource for use in those activities, excluding income earned from providing such services with respect to end users at the retail level, Y's gross income from the provision of those services is qualifying income within the meaning of § 7704(d)(1)(E).

Except as expressly provided herein, no opinion is expressed or implied concerning the 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 meets the 90 percent gross income requirement in § 7704(c). To the extent that Y's gross income from its activities described above are not attributable to its customer's § 7704(d)(1)(E) activities (i.e., to activities of the customer, such as drilling, exploration and production, transportation, or mining of a mineral or natural resources, that would generally be expected to produce gross income that is qualifying under § 7704(d)(1)(E) regardless of the customer's Federal tax classification), this letter 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).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, we are sending copies of this letter to your authorized representatives.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party.

While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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
Copy for § 6110 purposes

cc: