

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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November 05, 2012

Legend

X =

State =

Dear \_\_\_\_\_ :

This letter responds to a letter dated May 9, 2012, submitted on behalf of X by X's authorized representative, requesting a ruling under § 7701(d)(1)(E) of the Internal Revenue Code.

**FACTS**

X is a limited partnership organized under the laws of State. X is a publicly traded partnership within the meaning of § 7704(b). X, through a subsidiary, is engaged in the production and marketing of nitrogen fertilizer products.

X proposes selling its nitrogen fertilizer products, including ammonia, urea, and UAN fertilizer, to customers operating in non-agricultural industries. X also intends to sell nitric acid, produced as an intermediary step in the production of its direct-application fertilizer products, to customers operating in non-agricultural industries.

In addition, X intends to expand its facility in order to enable it to produce and market urea in solution. Urea in solution is a compound of urea, a nitrogen-based fertilizer, and water or condensed steam. Urea in solution can be used to reduce nitrogen oxide emissions in diesel engines. The urea in solution is processed within the vehicle where it is injected into the exhaust upstream of a catalyst, where the urea in solution

vaporizes and decomposes to form ammonia and carbon dioxide. The ammonia works with a catalyst to convert nitrogen oxides to nitrogen and water (steam), which are then released in the vehicle's exhaust.

X represents that each product will be sold for use in non-agricultural applications and the potential customers will not constitute end users of the products.

X seeks a ruling that income from the production and marketing of ammonia, urea, UAN fertilizer, nitric acid, and urea in solution to customers operating in non-agricultural industries will constitute qualifying income under § 7704(d)(1)(E).

### **LAW AND ANALYSIS**

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. 946-947.

### CONCLUSION

Based solely on the materials submitted and the representations made, we conclude that income derived by X from the production and marketing of ammonia, urea, UAN fertilizer, nitric acid, and urea in solution for non-retail sale to customers operating in non-agricultural industries will constitute qualifying income under § 7704(d)(1)(E) to the extent that the products in question would otherwise be marketable as fertilizer for agricultural purposes.

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 income tax purposes.

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

*Laura C. Fields*

Laura C. Fields  
Senior Technician Reviewer, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

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

cc: