

Internal Revenue Service

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LEGEND

X =

State =

A =

B =

Dear :

This letter responds to your letter dated January 8, 2009 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.

FACTS

Based on representations contained in the ruling request, X, a State limited partnership, is a publicly traded partnership, as defined by § 7704(b). X has not elected to be taxed as an association for federal income tax purposes. X, through various partnerships and disregarded entities, owns and operates a group of refineries and terminal facilities involved in the production and marketing of straight-run and modified asphalt. In the production of modified asphalt, straight-run asphalt is blended with non-petroleum based additives to increase certain performance characteristics of the asphalt as required by X's customers. Overall, the various types of modified asphalt produced by X contains between A - B percent of non-petroleum based additives with the remainder comprising straight-run asphalt.

X markets straight-run and modified asphalt products to federal, state and local governments and to commercial users for road construction, paving, roofing and other asphalt-related applications.

LAW AND ANALYSIS

Section 7704(a), enacted by the Revenue Act of 1987, Pub. Law No. 100-203 (the "1987 Act"), 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 partnership are readily tradable on a secondary market (or the 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) 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) 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) (the "Natural Resources Exception").

The Conference Report accompanying the 1987 Act in discussing the type of qualifying income described in § 7704(d)(1)(E), states as follows:

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 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. 947 (1987), 1987-3 C.B. 946-947.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that income derived by X in the production of straight-run and modified asphalt, will constitute qualifying income under § 7704(d)(1)(E). Additionally, we conclude that income earned by X from the marketing and distribution of the modified asphalt produced by X, excluding income earned from marketing minerals and natural resources to end users at the retail level, will also constitute qualifying income under § 7704(d)(1)(E).

Except as specifically ruled upon above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. Specifically, no opinion is expressed as to whether the 90 percent gross income requirement of section 7704(c)(1) is met.

The ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, copies of this letter will be sent to X's authorized representative.

Sincerely,

Melissa C. Liquerman
Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure (2)
Copy of this letter
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cc: