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Person To Contact: \_\_\_\_\_, ID No.

Telephone Number:

Refer Reply To:  
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October 21, 2013

Legend

X =

Y =

Z =

M =

N =

State =

n1 =

n2 =

n3 =

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

This responds to your letter dated August 8, 2013, submitted on behalf of X and Y, requesting a ruling concerning the qualifying income exception to the publicly traded partnership rules of § 7704 of the Internal Revenue Code.

Facts

The information submitted states that X is a limited liability company organized under the laws of State. Y is a limited partnership recently formed under the laws of State and is intended to be treated as a partnership for federal income tax purposes. Y intends to become a “publicly traded partnership” within the meaning of § 7704(b) through an initial public offering. X intends to contribute its interests in Z, an existing subsidiary of X that holds all of the assets and operations of X, to Y upon the closing of the initial public offering. The contributed assets will be comprised of existing subsidiaries of X that directly or indirectly own the n1 product tankers that will comprise Y’s initial fleet.

Y’s initial fleet of n1 product tankers are designed and certified to transport crude oil, petroleum products and certain chemicals. All of these vessels are currently operating under time charters with third parties, including major oil and gas companies as well as a division of M (hereinafter referred to as the “Initial Fleet Charters”). In general, under each Initial Fleet Charter, Y employs, through contracts with a third-party manager, the master and the crew for the vessel, and is responsible for the navigation, operation, and maintenance of the vessel. All of the vessels in Y’s initial fleet are currently carrying refined petroleum products or crude oil. In addition to the n1 vessels, Y will also be granted an option to purchase n2 newbuild vessels from N, an affiliate of one of the owners of X, upon the delivery of the vessels to N and acceptance of each vessel by the applicable charter-in-party. N has entered into time charters for each of these vessels with a major oil and gas company (these charters, collectively with the Initial Fleet Charters and other substantially similar charters that Y may enter into in the future, are referred to herein as the “Charters”, and any charterer of a vessel under the Charters is referred to herein as a “Charterer”).

The following general terms are representative of the general terms of Y’s existing and future Charters. The Charters are entered into in a standard service provision form that is readily recognized in the domestic tanker industry. The amounts payable by the Charterer are at a daily fixed rate, and charged pro rata for any part of a day. Y is generally responsible for all aspects of the navigation, operation, and maintenance of the vessel. Y must provide a full master and crew for the vessel throughout the charter period. All wages (including overtime payments) and other costs of the master and crew are costs borne and paid by Y. Y must provide and pay for insurance on the vessel and has a duty to maintain or restore the vessel as needed throughout the charter period. Y is responsible for arranging, and bears the cost of, all regulatory and charter inspections.

Y bears the risk of loss related to the vessel, because if the vessel is lost either actually or constructively, the charter terminates and hire ceases, and any hire paid in advance and not earned shall be returned to the Charterer. In addition, the Charters provide for potential compensation reductions in various events of Y’s nonperformance. For example, Y does not receive hire payments to the extent that the vessel is off-hire and cannot perform. Further, if Y breaches its obligation to exercise due diligence to maintain or restore the vessel and has failed to do so after 30 days following notice by

the Charterer, then the vessel is off-hire and no further hire payments are due. The vessel is also off-hire when service is interrupted or performance is reduced due to other specified reasons, although any service given or distance that is made by the vessel while it is off-hire is taken into account in assessing the amount to be deducted from hire.

The Charterer has the obligation to provide the master with instructions and sailing directions (subject to certain geographic restrictions). The Charterer can inspect the vessel at any time during the charter period, but cannot reduce the master's or Y's authority over, or responsibility for, the vessel. The Charterer is responsible for providing and paying for fuel, towage and pilotage, port charges and any expenses of loading and unloading cargo. The Charterer does not pay hire to Y when the vessel is off-hire and cannot perform. At any time the vessel is off-hire, the Charterer may give notice that it will terminate the charter after a 45-day period if Y does not take corrective action or substitute a vessel of comparable quality during such period. The Charterer has the option to lay-up the vessel for all or any portion of the charter term. During the lay-up period, hire will continue to be paid but shall be credited by amount that Y saves during the lay-up period, including through reduction in expenses. The Charterer may sub-charter or assign the charter to any individual or company but will remain responsible for the due fulfillment of the charter.

Although the general terms described above are representative of the general terms of Y's existing and future charters, there are certain distinctions in terms. The common terms of the Charters include (or will include the following): (1) the term of each charter, including extensions at the option of the Charterer, is less than n3 years; (2) Y designates the master and the crew for the vessel, and is responsible for the navigation, operation and maintenance of the vessel; (3) Y bears the risk of damage to and loss of the vessel; (4) the Charterer does not have an option to acquire the vessel at the conclusion of the term; (5) Y does not receive material compensation in the event that the vessel is off-hire and cannot perform. Any service given or distance made while the vessel is off-hire is taken into account in assessing the amount to be deducted from hire; (6) Y bears the cost of crewing, insuring, maintaining and repairing the vessel; and (7) the rate of hire is a fixed rate per day and charged pro rata for any partial days. Amounts that are payable under the Charters are not stated by reference to the cost of the vessel or as separate charges for services and for the use of the vessel. The rate of hire under the Charters is substantially higher than that which would be charged under a bareboat charter.

The distinctions in the terms in certain of the Charters are as follows: (1) generally, the Charters allow for termination by the Charterer prior to the expiration date only when there are specified events of default or breach of certain provisions of the agreement, such as if the vessel is off-hire for a specified period of time. However, under the terms of the charters for certain vessels, the Charterer has the right to terminate the Charter at its convenience. In the event of such termination or if the Charterer does not exercise

an option to extend the term of the charter, then Y is entitled to specified cancellation costs, which represent certain unrecovered additional costs expended by Y in order to prepare the applicable vessel for the particular needs of the Charterer; and (2) Under the terms of the charters for certain vessels, the Charterer is permitted to make certain alterations to the vessel at the Charterer's expense and time. Y's other charters do not allow for alterations during the charter period.

X requests a ruling that the gross income Y will derive from the transportation of crude oil, refined petroleum products and other products qualifying under § 7704(d)(1)(E) pursuant to the Charters as described above will constitute qualifying income under § 7704(d)(1).

### 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 partnership are readily tradable on a secondary market (or 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" means 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), industrial source carbon dioxide, or the transportation or storage of any fuel described in subsection (b), (c), (d), or (e) of section 6426, or any alcohol fuel defined in section 6426(b)(4)(A) or any biodiesel fuel as defined in section 40A(d)(1).

### Conclusion

Based solely on the facts submitted and representations made, we conclude that the gross income Y will derive from transporting crude oil, refined petroleum products, and other products qualifying under § 7704(d)(1)(E) pursuant to the Charters as described above will be 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, including whether Y meets the 90 percent gross income requirement of § 7704(c)(1) in any taxable year for which this ruling may apply. In addition, no opinion is expressed or implied concerning whether Y is or will be a partnership for federal tax purposes.

This ruling is directed only to the taxpayer requesting it. However, in the event of a technical termination of Y 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 this ruling may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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.

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,

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

Enclosures (2):

Copy of this letter  
Copy for § 6110 purposes