

**Internal Revenue Service**

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Washington, DC 20224

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, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B01  
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Date:  
April 22, 2013

Legend

X =

Y =

State =

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

This responds to a letter dated October 31, 2012, submitted on behalf of X by X's authorized representative, requesting a ruling under § 7704(d)(1)(E) of the Internal Revenue Code.

**FACTS**

X is a corporation organized under the laws of State. X intends to form a new entity, Y. After an initial public offering, Y will be organized as a limited partnership in State and will be a publicly traded partnership within the meaning of § 7704(b). Y's employer identification number will be applied for at the time of its organization.

Y, through affiliated operating limited partnerships, limited liabilities companies, or disregarded entities, will earn income from the provision of essential fluid handling services to oil and gas producers engaged in the exploration, development, and production of oil and natural gas. Specifically, Y will earn income from the supply, transportation, storage, and disposal of a variety of fluids, including any associated fractionation fluid heating services. Y will also earn income from the subsequent removal, treatment, and disposal of fracturing flowback, produced water, and salt water,

including, as part of its fluid handling services, the provision of frac tanks and transportation services.

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. To this end, Y will supply, and provide transportation and tank storage services with respect to, production fluid appropriate for the fracturing process to operators of oil and gas wells, as well as superheater services, whereby fracturing fluid is pre-heated prior to it being pumped into the well. Y will also remove, store, and transport flowback generated in the fracturing process, as well as naturally occurring produced water contained in the geological formation from which the oil and gas is produced. Y will treat the flowback and produced water so that it can be used in a fracturing process or be disposed of consistent with environmental regulations. Y will also provide fluids for use in drilling muds used in the drilling of oil and gas wells and casing cement used in oil and gas wellbores. Finally, as part of the extraction and production of oil and natural gas, Y expects to provide hot oiler services, whereby heating units are used to remove paraffin from drilling equipment and to provide heat-based produced water separation services at crude oil stock tanks at a producer's well site.

Y will charge its customers fees for the provision of fractionation fluid (including fees for the provision of fracturing fluid superheater services where necessary) and other fluids necessary for the drilling and completion of oil and natural gas wells, which fees may include tank storage and transportation components. Y will also charge its customers fees for the removal, treatment, and disposal of flowback and produced water, which fees may include tank storage and transportation components. In addition, Y will earn income from fees paid to provide hot oiler services during and after the extraction and production of oil and natural gas.

## **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).

### CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the gross income derived by Y from the supply, transportation, and storage of fractionation fluid and other fluids for oil and natural gas wells, including any associated fractionation fluid heating services, and from the removal, treatment, and disposal of fracturing flowback, produced water, and salt water, including the provision of frac tanks and transportation services, to oil and natural gas producers for use in their exploration for and production of oil and natural gas resources constitutes qualifying income under § 7704(d)(1)(E).

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 Y 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 Y under § 708(b)(1)(B), the resulting partnership may to 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: