

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B03 PLR-116822-03
Date:
August 6, 2003

W =

X =

Y =

b =

Property =

Agreement =

State =

Dear :

This letter responds to your letter dated March 5, 2003, and subsequent correspondence, 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

W is a limited liability company organized under the laws of State. X is a publicly traded partnership organized under the laws of State. W is treated as a partnership for federal income tax purposes. X owns a b interest in W.

W is engaged in the operation and leasing of Property. W receives payments with respect to Property under the terms of Agreement from Y, an unrelated corporation.

X requests a ruling that its distributive share of income received from W attributable to payments received under Agreement is qualifying income under § 7704(d)(1).

Law and Analysis

Section 702(a)(7) provides that, in determining income tax liability, each partner shall take into account separately the partner's distributive share of the partnership's items of income, gain, loss, deduction, and credit to the extent provided by regulations.

Section 1.702-1(a)(8)(ii) of the Income Tax Regulations provides that each partner must take into account separately the partner's distributive share of any partnership item that would result in an income tax liability for that partner different from that which would result if that partner did not take the item into account separately.

Section 702(b) provides that the character of any item of income, gain, loss, deduction, or credit included in a partner's distributive share under § 702(a)(1) through (7) shall be determined as if the item were realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership.

Section 7704(a) provides that a publicly traded partnership shall be treated as a corporation.

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.

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Section 7704(d)(1) generally defines the term “qualifying income” for purposes of § 7704.

Conclusion

Based solely on the facts submitted and representations made, we conclude that X's distributive share of income from W attributable to payments received under Agreement is qualifying income as defined in § 7704(d)(1).

Except as specifically provided, no opinion is expressed or implied as to the federal 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 X meets the 90 percent gross income requirement of § 7704(c)(1).

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, a copy of this letter is being sent to X.

Sincerely yours,

James A. Quinn
Senior Counsel, Branch 3
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes