

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03 PLR-161878-03

Date:

February 10, 2004

X =

W =

Y =

A =

a =

b =

c =

r =

s =

t =

v =

Pipeline 1 =

Pipeline 2 =

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Agreement 1 =

Agreement 2 =

D1 =

State =

Dear :

This letter responds to your letter dated October 23, 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

X is a limited partnership organized under the laws of State. X is a “publicly traded partnership” within the meaning of § 7704(b). X is engaged in the storage, transportation, and distribution of refined petroleum products and ammonia fertilizer.

X, through various partnerships and disregarded entities, owns interests in a marine petroleum product terminal facilities, b inland petroleum product terminals, and c petroleum product terminals associated with A. X represents that it is not engaged in retail activity.

Petroleum product terminals are centralized locations where fuel is received from major common carrier pipelines (or other vessels) and stored until transportation through a complex of equipment necessary to load delivery vehicles with the fuel. In connection with the petroleum product terminals, X earns income by charging customers a single throughput-fee based on the amount of the fuel delivered through each terminal. In addition, X earns income by charging customers a fee to inject additives or blend ethanol with the fuel.

In addition to the operation of the product terminal facilities, X is engaged in the operation of Pipeline 1 on behalf of W and intends to engage in the operation of Pipeline

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2 on behalf of Y. The activities and assets of W are limited to the operation of Pipeline 1. The activities and assets of Y are limited to the operation of Pipeline 2.

Pipeline 1 began operations in D1 for the purpose of transporting natural gas liquids, including propane, butane, isobutene, ethane and natural gasoline, from r to s. Pipeline 2 is currently under construction and once completed will be used for the purpose of transporting refined petroleum productions, including gasoline, diesel fuel, and jet fuel, from t to v.

Pursuant to Agreement 1, X is responsible for all transportation of natural gas liquids through Pipeline 1. In this regard, X performs all the functions associated with the movement of the natural gas liquid including: contacting customers, taking delivery from customers, metering the quantity of natural gas liquids, monitoring the specification of the natural gas liquids, offloading the product to customers, staffing, employing all personnel necessary for the operation of Pipeline 1, conducting routine maintenance, identifying and purchasing supplies, and handling all commercial transactions, including the billing, accounting, and financial reporting for Pipeline 1. In consideration for operating Pipeline 1, X receives amounts including a management fee and reimbursement for certain operating expenses from W.

Pursuant to Agreement 2, and upon completion, X will be responsible for all transportation of refined petroleum products through Pipeline 2. In this regard, X will perform all the functions associated with the movement of the natural gas liquid including: contacting customers, taking delivery from customers, metering the quantity of the refined petroleum products, offloading the refined petroleum products to customers, staffing, employing all personnel necessary for the operation of Pipeline 2, conducting routine maintenance, identifying and purchasing supplies, and handling all commercial transactions, including the billing, accounting, and financial reporting for Pipeline 2. In consideration for operating Pipeline 2, X receives amounts including a management fee and reimbursement for certain operating expenses from Y.

X requests a ruling that its income derived from the product terminal facilities and the operation of Pipeline 1 and Pipeline 2 is 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 the substantial equivalent thereof).

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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) provides that the term qualifying income means, among other things, 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).

Conclusion

Based solely on the facts submitted and representations made, we conclude that the income derived by X from the product terminal facilities and the operation of Pipeline 1 and Pipeline 2 is qualifying income within the meaning of § 7704(d)(1)(E).

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.

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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,

/s/

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

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