

Internal Revenue Service

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Date: December 7, 2006

LEGEND:

X =

Y =

Z =

W =

a =

b =

c =

d =

State =

Location 1 =

Location 2 =

Location 3 =

Location 4 =

Location 5 =

Location 6 =

Location 7 =

Location 8 =

Location 9 =

Date 1 =

Dear :

This letter responds to your letter dated January 24, 2006, 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). The largest interest in X, including the general partnership interest, is held by members of the Y consolidated group. X is engaged in the refined petroleum products terminaling and pipeline business.

X provides integrated terminaling, storage, pipeline and related services for companies engaged in the distribution and marketing of refined petroleum products and crude oil. X handles light refined products such as gasolines, distillates (including diesel fuel and heating oil) and jet fuels, heavy refined products such as residual fuel oils and asphalt, and crude oil. X does not take ownership of the products that it handles or transports. The substantial majority of X's business is devoted to providing integrated terminaling and pipeline services to members of the Y consolidated group. X represents that more than 90% of X's gross income is "qualifying income" within the meaning of § 7704(d).

X conducts its business through various disregarded entities. X owns and operates a refined petroleum products terminals in Location 1, a refined petroleum products pipeline between Location 2 and Location 3, and b refined petroleum products terminals at the end of each of its pipelines. In addition, X has options to acquire from members of the Y consolidated group additional terminals in Location 4, Location 5, and Location 6, at the terminal's fair market value at the time of the sale. X expects to purchase the terminals at Locations 4 and 6 for cash. As part of its terminaling services, X provides additization and blending services, such as injecting additives to gasoline, injecting dye into diesel fuel, and blending biodiesel fuel with petroleum diesel fuel. In the future, X expects to inject lubricity additives into petroleum diesel fuel, blend biodiesel fuel into bunker fuel for ships, blend ethanol with gasoline, and blend a hydrogen sulfide inhibiting additive into imported refined petroleum products at its terminals. X derives revenues from its refined product terminals by charging fees for providing integrated terminaling and related services. In some cases, its additization services are included in the price paid for terminaling services and, in other cases, separately stated fees are charged for its additization services. X derives revenues from its pipeline operations by charging a tariff for transporting refined products.

Additionally, Z, a lower tier subsidiary of Y, leases a terminal facility located adjacent to one of X's terminals in Location 1. On Date 1, Z and X entered into a Terminal Agreement, whereby X took over the operations of Z's leased terminal. Under the Terminal Agreement, X performs all of the functions associated with the movement and storage of jet fuel under contracts with third parties, including the receipt, throughput, storage and delivery of the jet fuel, measuring the quantity of the jet fuel received and delivered, providing personnel necessary for the operation of the terminal, conducting inspections, providing routine and preventative maintenance and identifying and purchasing supplies. Under the Terminal Agreement, X receives a per barrel fee from Z.

If X exercises its option to acquire the terminal at Location 4, X anticipates that it will serve as the operator of a refined petroleum products pipeline owned by a subsidiary of W. The pipeline transports refined petroleum products between the terminal at Location 4 and W's refinery located at Location 7, with additional delivery points thereafter. X expects to perform all functions in connection with the operation of the portion of the pipeline between Location 4 and Location 8, including receiving the refined products, monitoring the specifications of the refined products, and providing all the necessary horsepower to pump the refined products to Location 9, providing the personnel necessary for the operations of the pipeline, conducting inspections, and providing routine and preventative maintenance. X expects to receive a fee based on the volume of products transported through the pipeline.

X requests the following rulings:

- (1) X's income derived from the injection of additives and dyes into, and the blending of biodiesel (in concentrations of up to 5% biodiesel) and ethanol with, refined petroleum products in connection with its terminaling services is qualifying income within the meaning of § 7704(d)(1)(E); and
- (2) X's income derived from the operation of a refined products terminal and a refined products pipeline owned by other persons is qualifying income under § 7704(d)(1)(E).

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).

Section 7704(c)(1) provides that § 7704(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 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). For purposes of § 7704(d)(1)(E), the term “mineral or natural resource” means any product of a character with respect to which a deduction for depletion is allowable under § 611; except that such term shall not include any product described in § 613(b)(7)(A) or (B).

Conclusion

Based solely on the facts submitted and representations made, we conclude that the income derived by X from the injection of additives and dyes into, and the blending of biodiesel (in concentrations of up to and including c% biodiesel) and ethanol (in concentrations of up to and including d% ethanol) with, refined petroleum products in connection with its terminaling services is qualifying income within the meaning of § 7704(d)(1)(E). We further conclude that the income derived by X from the operation of refined products terminals and refined products pipelines owned by other persons 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.

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, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

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