

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200921010**
Release Date: 5/22/2009

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Number: 7704.00-00, 7704.03-00

, ID No.
Telephone Number:

Refer Reply To:
CC:PS:B02
PLR-135943-08
Date:
February 10, 2009

Legend

X:

Y:

Z:

Q:

P:

State:

Dear _____ :

This responds to a letter dated August 15, 2008, 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.

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 principally engaged in the transportation, storage and distribution of refined petroleum products. This ruling request involves fees X charges as part of its refined product terminal operations at two terminals, Q and P. X subsidiary Y owns terminal Q and subsidiary Z owns terminal P.

X's terminal operations generate fees primarily by providing short and long term storage of crude oil and refined petroleum products, as well as ancillary services. Revenue is generated by charging customers a fee based on the amount of product that is delivered through the particular terminal. This fee is commonly referred to as a "throughput" fee and is generally determined on a per barrel or per gallon basis. In addition to throughput fees, revenue is often generated by charging customers fees for providing ancillary services such as ethanol blending and additive injection. X generally does not take title to the products that are handled in its terminal operations.

Terminal Q

Y enters into agreement with various customers, whereby petroleum products owned by the customers are delivered to Q via pipeline. After receiving the petroleum products, Y stores and loads the products into tank trucks and trailers for removal from Q. Y charges its customers a throughput fee related to the gasoline delivered through Q. In separate agreements, Y also accepts ethanol owned by its customers via truck. The ethanol is off-loaded at Q where it is maintained until such time as the ethanol is blended with gasoline owned by the customers and loaded onto trucks for removal from Q. As compensation for these services, Y charges its customers a per gallon fee for each gallon of ethanol delivered through Q.

Terminal P

Z enters into agreement with various customers, whereby petroleum products owned by the customers are delivered to P via pipeline, ship or barge. After receiving the petroleum products, Z stores and loads the products into pipelines, vessels, barges and trucks for removal from P. In separate agreements, Z also accepts ethanol owned by its customers via ship or barge. The ethanol is off-loaded at P where it is maintained until such time as the ethanol is blended with gasoline owned by the customers and loaded onto trucks for removal from P. Z charges its customers a throughput fee related to the gasoline and ethanol delivered through P. Z also charges an additional fee depending on the method of inbound/outbound delivery of the petroleum products and ethanol to/from P. Finally, Z also charges its customers a per gallon fee for each gallon of blended gasoline and ethanol.

X has requested a ruling that X's income derived from its petroleum products terminals Q and P, constitute qualifying income under § 7704(d)(1)(E).

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 § 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 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 § 6426, or any alcohol fuel defined in § 6426(b)(4)(A) or any biodiesel fuel as defined in § 40A(d)(1).

Based solely on the facts submitted and representations made, we conclude that the income derived by X from its petroleum products terminals Q and P, is 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. In particular, no opinion is expressed as to whether X meets the 90 percent gross income requirement of § 7704(c)(1) in any taxable year for which this ruling may apply.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2009-1, 2009-1 I.R.B. 1, 48. However, when the criteria in section 11.06 of Rev. Proc. 2009-1, 2009-1 I.R.B. 1, 49 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes

cc: