

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201005018**  
Release Date: 2/5/2010

Third Party Communication: None  
Date of Communication: Not Applicable

Index Number: 7704.00-00, 7704.03-00

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B03  
PLR-126618-09  
Date:  
October 06, 2009

**LEGEND**

X =

State =

Facility =

Product =

Dear :

This letter responds to a letter dated May 22, 2009, submitted on behalf of X by its authorized representative, 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 created under the laws of State. X represents it is a “publicly traded partnership” within the meaning of § 7704(b). X is engaged in the business of providing crude oil gathering, transportation, terminalling and storage services and Product terminalling and storage services. X derives income from providing Product terminalling and storage services in its Facility. X intends to derive the majority of its income from leasing its Facility to lessee, an entity that will be licensed to operate the Facility.

X represents that the Facility is a system of physically connected and functionally interdependent assets designed to receive, store, and distribute Product at elevated

temperatures. X represents that no single component of the Facility may be effectively operated for its intended useful purpose without each of the other components of the Facility. The Facility was designed and constructed to remain permanently in place; therefore, its component parts have long useful life spans. Furthermore, when a component is removed because of a malfunction or obsolescence, it is replaced with a similar long-lived component.

The major structural components of the Facility include: 1) hoses, pipes, manifolds, valves and an underground scale; 2) loading racks which include steel frame structures affixed to the land; 3) a system of insulated heat traced pipes which are suspended above ground on a steel girder system which is affixed to the land; 4) pumps, valves, and vents periodically spaced along, and affixed to, the piping system; 5) storage tanks of various sizes (ranging from 1,000 gallons to in excess of 7,000,000 gallons) which are permanently affixed to the system and, in many cases, also to the ground, and which are insulated and contain heating elements that allow Product to be stored in a heated state; 6) boilers which are permanently affixed to the system and which are used to provide the steam needed to keep the system heated; 7) blending devices permanently affixed to the piping system; and 8) buildings permanently affixed to the ground to house control systems, boilers, and personnel. The Facility also includes various interests in or rights to occupy land, including easements. The Facility also has various driveways and roadways, docks, rail spurs, dikes, containment areas, and security fencing.

X represents that the amounts received by X under the lease will be for the use of, or the right to use, the Facility. X represents that: 1) the lessee will not be related to X within the meaning of § 856; 2) X will not furnish or render any services to the lessee in connection with the lease and the lessee will operate the terminals; 3) the lessee will retain the title to Product and not X; 4) the lessee is responsible for complying with all environmental, health, safety, transportation and security laws; 5) the lessee is required to obtain and maintain the necessary permits, licenses, plans, approvals or other authorizations and obtain insurance for the Facility; and 6) most maintenance and repair of the Facility is the responsibility of lessee. X represents that any personal property that would be included under a lease agreement of the Facility would be a de minimus amount and would meet the fifteen percent limit in § 856(d)(1).

## LAW AND ANALYSIS

Section 7704(a) provides that generally 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 § 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) provides 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)(C) provides that, for purposes of § 7704, and except as otherwise provided in § 7704(d), the term “qualifying income” includes real property rents. Section 7704(d)(3) provides that the term “real property rent” means amounts which would qualify as rent from real property under § 856(d) if A) § 856(d) was applied without regard to § 856(d)(2)(C) (relating to independent contractor requirements), and B) stock owned, directly or indirectly, by or for a partner would not be considered as owned under § 318(a)(3)(A) by the partnership unless 5 percent or more (by value) of the interests in such partnership are owned, directly or indirectly, by or for such partner.

Section 856(d)(1) provides that “rents from real property” include (subject to exclusions provided in § 856(d)(2)): A) rents from interests in real property, B) charges for services customarily furnished or rendered in connection with the rental of real property, whether or not such charges are separately stated, and C) rent attributable to personal property leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease.

Section 1.856-3(d) provides that “real property” includes land or improvements thereon, such as buildings or other inherently permanent structures thereon (including items which are structural components of such buildings or structures). Local law definitions will not be controlling for purposes of determining the meaning of “real property” for purposes of § 856 and the regulations thereunder. “Real property” includes, for example, the wiring in a building, plumbing systems, central heating or central air-conditioning machinery, pipes or ducts, elevators or escalators installed in a building, or other items which are structural components of a building or other permanent structure. The term does not include assets accessory to the operation of a business, such as machinery, printing press, transportation equipment which is not a structural component of the building, office equipment, refrigerators, individual air-conditioning units, grocery counters, furnishings of a motel, hotel, or office building, etc. even though such items may be termed fixtures under local law.

Rev. Rul. 69-94, 1969-1 C.B. 189, considers whether properties of a railroad, including land with improvements or other inherently permanent structures situated

thereon which may be under, along, or adjacent to certain lines of the railroad, and including the tracks, roadbed, buildings, bridges and tunnels of the railroad, are real property for purposes of § 856. The revenue ruling holds that the railroad properties owned by the trust that are leased to another corporation are not “assets accessory to the operation of a business” within the meaning of § 1.856-3(d), but are “real estate assets” within the meaning of § 856(c).

Rev. Rul. 71-220, 1971-1 C.B. 210, considers whether mobile home units installed in a planned community are real property for purposes of § 856. The units were delivered to a site where they were set on foundations consisting of pre-engineered blocks. The wheels and axles were removed from the units, and the units were affixed to the ground by six or more steel straps. A carport or screened porch was attached to each unit and the unit was connected to utilities. The revenue ruling holds that the units are real property within the meaning of § 856.

Rev. Rul. 73-425, 1973-2 C.B. 222, considers whether a mortgage secured by a shopping center and its total energy system is an obligation secured by real property. A total energy system is a self-contained facility for the production of all the electricity, steam or hot water, and refrigeration needs of associated commercial or industrial buildings, building complexes, shopping centers, apartment complexes, and community developments. The system may be permanently installed in the building or attached to the building, or it may be a separate structure nearby. The principle components consisted of electric generators powered by turbines or reciprocating engines, waste heat boilers, heat exchangers, gas-fired boilers, and cooling units. In addition, each facility includes fuel storage tanks, control and sensor equipment, electrical substations, and air handling equipment for heat, hot water, and ventilation. It also includes ducts, pipes, conduits, wiring, and other associated parts, machinery and equipment. The revenue ruling holds, in part, that a mortgage secured by the building and the system is a real estate asset, regardless of whether the system is housed in the building it serves or is housed in a separate structure apart from the building it serves. This is because the interest in a structural component is included with an interest held in a building or inherently permanent structure to which the structural component is functionally related.

Rev. Rul. 75-424, 1975-2 C.B. 269, considers whether certain equipment used in connection with the transmission and reception of microwave signals is treated as real property or assets accessory to a business, for purposes of § 856. The system consists of transmitting and receiving towers built upon pilings or foundations, transmitting and receiving antennae affixed to the towers, a building, equipment within the building, and waveguides. The waveguides are transmission lines from the receivers or transmitters to the antennae, and are metal pipes permanently bolted or welded to the tower and never removed or replaced unless blown off by weather. The transmitting, multiplex, and receiving equipment is housed in the building. Prewired modular racks are installed in the building to support the equipment that is installed upon them. The racks are completely wired in the factory and then bolted to the floor and ceiling. They are

self-supporting and do not depend upon the exterior walls for support. The equipment provides for transmission of audio or video signals through the waveguides to the antennae. Also installed in the building is a permanent heating and air conditioning system. The transmission site is surrounded by chain link fencing. The revenue ruling holds that the building, the heating and air conditioning system, the transmitting and receiving towers, and the chain link fencing are “real estate assets” within the meaning of § 856(c)(5)(B). The antennae, waveguides, transmitting, receiving, and multiplex equipment, and the prewired modular racks are “assets accessory to the operation of a trade or business” and are not “real estate assets” within the meaning of § 856(c)(5)(B).

### CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the Facility, as described above, is an inherently permanent structure that is not accessory to the operation of a business. Accordingly, the Facility constitutes real property for purposes of § 856(d), and the rental income derived by X from its lease of the Facility is qualifying income within the meaning of § 7704(d)(1)(C).

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 or implied 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. In addition, no opinion is expressed or implied as to the federal tax consequences of the lease of the Facility under any provision not specifically addressed herein, and no opinion is expressed or implied regarding the components of the Facility not described above.

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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

The ruling contained in this letter is 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,

*/s/*

Leslie H. Finlow  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes