

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:B02
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Date:
December 08, 2010

Legend

X =

Y =

Z =

Country =

State =

Date =

Dear _____ :

This responds to a letter dated September 7, 2010, and subsequent correspondence submitted on behalf of X, requesting a ruling under §§ 851(b)(2)(A) and 7704(d)(4) of the Internal Revenue Code.

FACTS

The information submitted states that X is a limited liability company formed under the laws of State. Y is the managing member and tax matters partner of X. On Date, X offered its common interests to the public in an initial public offering on Z, an established securities market. X represents that it has not elected and will not elect to be treated as an association taxable as a corporation for federal income tax purposes.

Instead, X represents that it intends to be taxed as a partnership, rather than as a publicly traded partnership (“PTP”) as defined in § 7704(b) that would be treated as a corporation for federal tax purposes, by relying on the “qualifying income” exception in § 7704(c).

X engages in the storage and marketing of natural gas through its operating subsidiaries. X has represented that certain of these operating subsidiaries are organized as corporations under the laws of Country and are treated as controlled foreign corporations (“CFCs”) under § 957(a) (hereinafter referred to as the “X CFCs”). X also represents that it is a “United States shareholder” within the meaning of § 951(b) with respect to each of the X CFCs.

According to the information submitted, the X CFCs purchase natural gas from certain other of X's operating subsidiaries under terms consistent with those entered into at arm's length between unrelated parties. The X CFCs then re-sell the natural gas to unrelated third parties. The information submitted further provides that, in some instances, the income the X CFCs generate from these third party sales is expected to constitute income from transactions in commodities within the meaning of § 954(c)(1)(C). Thus, the excess of gains over losses from the commodities transactions will constitute foreign personal holding company income, which is a type of subpart F income under § 952(a)(2). Also, in some instances, the X CFCs are expected to earn interest income that is foreign personal holding company income under § 954(c)(1)(A) and, thus, subpart F income. Consequently, X represents that it may be required to include an amount in income under § 951(a)(1)(A)(i) that is attributable to the subpart F income earned by the X CFCs.

LAW AND ANALYSIS

Section 7704(a) provides that, except as provided in § 7704(c), a PTP will be treated as a corporation. Section 7704(b) defines a PTP as a partnership if (1) interests in the partnership are traded on an established securities market, or (2) interests in the partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

Under § 7704(c), if 90 percent or more of the gross income of the PTP for a taxable year consists of “qualifying income,” § 7704(a) does not apply to the PTP for the taxable year. Section 7704(d) provides that qualifying income includes any income that would qualify under § 851(b)(2)(A) or § 856(c)(2).

Section 851(b)(2)(A) defines qualifying income for a regulated investment company (“RIC”), in relevant part, as dividends, interest, payments with respect to securities loans (as defined in § 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in § 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from

options, futures or forward contracts) derived with respect to [the RIC's] business of investing in such stock, securities or currencies.

Section 851(b) further provides that, for purposes of § 851(b)(2), there shall be treated as dividends amounts included in gross income under § 951(a)(1)(A)(i) for the taxable year to the extent that, under § 959(a)(1), there is a distribution out of the earnings and profits of the taxable year that are attributable to the amounts so included.

Section 957 defines a CFC as any foreign corporation in which more than 50 percent of (1) the total combined voting power of all classes of stock entitled to vote, or (2) the total value of the stock is owned by United States shareholders on any day during the corporation's taxable year. A United States shareholder is defined in § 951(b) as a United States person who owns 10 percent or more of the total combined voting power of all classes of voting stock of a foreign corporation. X will own the requisite percent of the voting power and value described in (1) and (2), above.

Section 951(a)(1) provides that, if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder of the corporation and who owns stock in the corporation on the last day in the taxable year in which the corporation is a CFC shall include in gross income an amount which includes the United States shareholder's pro rata share of the CFC's subpart F income for the taxable year.

Section 952(a)(2) defines subpart F income to include foreign base company income determined under § 954. Under § 954(a)(1), foreign base company income includes foreign personal holding company income determined under § 954(c). Section 954(c)(1) defines foreign personal holding company income to include dividends, interest, royalties, rents and annuities, gains in excess of losses from transactions (including futures, forward, and similar transactions) in any commodities, and net income from notional principal contracts not entered into for purposes of hedging any other prescribed income item.

The X CFCs' investments in natural gas is expected to produce income from transactions in commodities that will generate foreign personal holding company income under § 954(c)(1)(C), which is a type of subpart F income. Additionally, in some instances the X CFCs are expected to earn interest income that is foreign personal holding company income under § 954(c)(1)(A). X would therefore include in income under § 951(a)(1)(A)(i) its respective pro rata share of the X CFCs' subpart F income for the taxable year.

CONCLUSION

Based solely on the information submitted, we conclude that the amount included in the income of X under § 951(a)(1)(A)(i) as X's pro rata share of the X CFCs' subpart F

income under § 954(c)(1)(A) and (C) will be treated as qualifying income for purposes of § 851(b)(2)(A) and § 7704(d)(4), without regard to whether or the extent to which the X CFCs make distributions to X during the taxable year.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal income tax consequences of the facts described above under any other provision of the Code.

This letter 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.

A copy of this letter ruling must be attached to any federal 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.

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,

Charlotte Chyr
Senior Technician Reviewer, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes