

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201132012**

Release Date: 8/12/2011

Index Number: 7704.00-00, 7704.03-00

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact: _____, ID No.

Telephone Number: _____

Refer Reply To:
CC:PS:B02
PLR-145299-10
Date:
April 29, 2011

Legend

X =

Y =

Z =

M =

N =

O =

P =

Q =

R =

S =

I =

U =

V =

State =

a =

b =

c =

d =

e =

f =

Dear _____ :

This responds to your letter dated November 1, 2010, 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 represents that it is a “publicly traded partnership” within the meaning of § 7704(b). Y, a limited liability company organized under the laws of State, is the general partner and the tax matters partner of X. Y is wholly owned by Z. X, through affiliated operating entities, is principally engaged in the activity of natural gas gathering, natural gas processing, natural gas marketing, and the storage, fractionation, distribution and marketing of natural gas liquids (NGLs) and NGL products.

X has requested a ruling that the gross income it derives from operating natural gas processing and natural resource storage facilities, as described below, constitute qualifying income under § 7704(d)(1)(E).

Natural Gas Processing Activities

X owns gas processing plants located in several states. Among these facilities are M, N and O. X has an ownership interest in the entities that own M and N. M and N consist of cryogenic gas processing trains that chill natural gas streams in order to recover significant amounts of NGLs from such streams. M is connected to major common carrier pipelines that deliver natural gas to the plants and deliver Mixed NGLs from the plants to the next point in the supply chain. N owns a gas gathering system that gathers

natural gas from producers at the wellhead, delivers the gas to the processing plant, and delivers NGLs from the plant to the next point in the supply chain.

X also owns an interest in O. O is a refrigeration plant that chills a natural gas stream in order to separate condensed NGLs from the natural gas stream. O is connected to several major common carrier pipelines that deliver natural gas to the plant and deliver Mixed NGLs from the plant to the next point in the supply chain.

X's assets dedicated to the processing of Mixed NGLs through fractionated are in several locations. X owns an interest in P, which owns Q. Q is comprised of several fractionation trains consisting of deethanizers, depropanizers, debutanizers. Q is connected to the major common carrier pipelines that deliver Mixed NGLs from the gas processing plants to Q and deliver NGL products from Q to the next point in the supply chain.

X serves as the operator of M, N and O and has entered into an operating agreement for each facility. Pursuant to each of the operating agreements, X performs all functions associated with processing natural gas at the plant, including: (i) contracting with customers for the use of the plant; (ii) taking delivery of the natural gas from various gathering systems or common carrier pipelines; (iii) performing the tasks necessary to process the natural gas; (iv) metering the quantities of natural gas; (v) monitoring the specifications of natural gas; and (vi) performing the tasks necessary to off-load the natural gas for receipt by the customer. In addition, X is responsible for all the functions associated with the ownership of each plant, including staffing each plant, employing, either directly or through an affiliate, all personnel who physically control the processing facility, handling all commercial transactions, and conducting routine maintenance, as well as identifying and purchasing all supplies necessary to operate each plant. Finally, X is responsible for billing, accounting, financial reporting, and treasury functions for the plants. Pursuant to the operating agreements, X is entitled to a fee and reimbursement for all costs incurred to operate and maintain the plant.

X also serves as the operator of Q pursuant to an operating agreement with P. X is responsible for all processing of Mixed NGLs through Q. Pursuant to the operating agreement, X performs all functions associated with processing the product, including: (i) contracting with customers for the use of Q; (ii) taking delivery of the Mixed NGL stream from various common carrier pipelines; (iii) performing the tasks necessary to process the NGLs; (iv) metering the quantities of NGLs; (v) monitoring the specifications of NGLs; and (vi) performing the tasks necessary to off-load the product for receipt by the customer. In addition, X is responsible for all the functions associated with the ownership of Q, including staffing the facility operations, employing, either directly or through an affiliate, all personnel who physically control the facility, handling all commercial transactions, conducting routine maintenance, identifying and purchasing all supplies necessary to operate the facility, and overseeing and coordinating any expansion or modification of the facility. Finally, X is responsible for billing, accounting,

financial reporting, and treasury functions of the facility. Pursuant to the operating agreements, X is entitled to a fee and reimbursement for all costs incurred to operate, maintain, and expand the facility, including shared expenses.

Natural Resource Storage Activities

X serves as the operator of R, the primary storage area for Mixed NGLs and NGL products fractionated by Q and is connected by common carrier and private pipelines for Mixed NGL supply. R distributes NGLs through several logistics methods, with pipelines to customers being the predominant method of delivery. R consists of a underground storage wells, b of which are owned by X. The remaining wells are owned by S.

Pursuant to a cost-sharing agreement, X operates the wells owned by S in exchange for a fee and S's share of the costs. X's duties as operator of R include (i) taking delivery of the product from various common carrier pipelines, (ii) injecting the product into the underground storage wells, (iii) metering the quantities of products stored in the wells owned by S, (iv) monitoring the specifications of products, and (v) performing the tasks necessary to off-load the product for receipt by customers. In addition, X is responsible for staffing R, employing all personnel who physically operate the facility and maintain it in accordance with industry standards and state, local, and federal regulations. Any costs incurred by X for the sole benefit of S's underground storage wells are billed directly to S. In addition, costs incurred that benefit both X and S are allocated c% to X and d% to S.

X is the sole owner of T that is an underground storage facility which consists of e underground storage wells and is connected by pipeline to U. X utilizes f of these underground wells to provide long-term and short-term storage services and throughput services to internal and third-party customers. X has leased the remaining wells to V pursuant to a long-term lease.

Under the lease agreement with V, X serves as the operator of the leased wells at T. In its capacity as operator, X is responsible for (i) injecting and withdrawing product into the leased underground storage wells, (ii) transporting product from the underground storage wells to U, and (iii) metering the quantities of products stored in the leased wells. In addition, X is responsible for staffing T, employing all personnel who physically control the facility, and maintaining the facility in accordance with industry standards and local, state, and federal regulations. In exchange for its services as the contract operator of T, X is paid a fixed fee as well as a reimbursement for certain expenses and other amounts.

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 substantial equivalent thereof).

Section 7704(c)(1) provides that section 7701(a) shall not apply to any publicly traded partnership for any taxable year if such partnership met the gross income requirements of section 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 section 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).

Conclusion

Based solely on the facts submitted and representations made, we conclude that to the extent X derives gross income from the operations of M, N, O, Q, R and T (which may include fees and cost reimbursements depending on the facts and circumstances), such gross income will be 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, including 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 concerning whether any of the ownership structures discussed or referenced in this letter constitute partnerships for federal tax purposes.

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 § 11.04 of Rev. Proc. 2011-1, 2011-1 I.R.B. 1, 50. However, when the criteria in § 11.06 of Rev. Proc. 2011-1, 2011-1

I.R.B. 1, 50 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

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.

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

cc: