

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
 , ID No.

Telephone Number:

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Date:
November 28, 2012

LEGEND

X =

State =

Dear :

This letter responds to a letter dated September 20, 2012, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under § 7704(d)(1)(E) of the Internal Revenue Code.

FACTS

You have represented that the facts are as follows. X is a limited partnership organized under the laws of State and is classified as a partnership for federal tax purposes. Further, X represents that it is a “publicly traded partnership” within the

meaning of § 7704(b).

X earns income by terminalling, storing, and transporting crude oil, refined petroleum products, and liquefied petroleum gas (LPG) on behalf of its customers, who include refineries, chemical and petrochemical companies, common carriers and other pipeline transporters. X's terminalling, storage, and transportation assets include storage tanks, marine docks, and pipelines. X represents that X's terminalling, storage and transportation services are integral to the transportation of the crude oil, refined petroleum products, and LPG at their terminals. X's facilities serve as hubs connecting multiple modes of transportation (such as pipelines, trucks, barges, tankers, and railcars) involved in transporting crude oil, refined petroleum products, and LPG from producing regions to refineries and the resulting refined products from the refineries to their ultimate markets. Storage capacity is required at such interconnection hubs to facilitate efficient transportation and accommodate supply and demand imbalances within the production, transportation, and refining systems. For example, storage tanks are necessary to accept the high volumes and flow rates of products entering X's facilities via marine vessels and/or pipelines, and hold the products until they can be fed into other modes of transportation in volumes and flow rates appropriate for such modes of transportation and the customer's demands.

If no transportation pipeline exists between X's current terminalling, storage, and transportation assets and a potential customer's facilities (the location from which the customer needs access to X's terminals) or it is otherwise necessary to expand X's terminalling, storage, or transportation assets to facilitate a customer's terminalling, storage, and transportation requests, X and the customer may enter into a separate contract under which terminalling, storage, and transportation facility improvements will be constructed (an "expansion agreement"). The terminalling, storage, and transportation facility improvements may include pipeline interconnects, dock expansions, or the construction of additional tankage and related manifolds and piping to facilitate additional volumes of crude oil, refined petroleum products, and LPG. The expansion agreements take several forms, but all provide that the customer will ultimately bear some or all of the construction costs. In some cases, the customer is responsible for constructing the facility improvements and subsequently transfers ownership of the completed improvements to X. In other cases, the customer will provide X with reimbursement payments to cover X's construction costs. In still other cases, the customer will neither construct the improvements nor explicitly pay X for the construction of the improvements, but will instead agree to pay a premium for X's terminalling, storage, and transportation services; through payment of these premiums, the customer will eventually reimburse X for some or all of its construction costs. In all cases, X will ultimately own the terminalling, storage, and transportation facility improvements constructed pursuant to the expansion agreements.

X represents that the expansion agreements are integral to X's terminalling, storage, and transportation of crude oil, refined petroleum products, and LPG.

Specifically, X represents that each terminalling, storage, and transportation facility improvement constructed pursuant to an expansion agreement is necessary to facilitate a service relationship, and that each customer bears the costs of the terminalling, storage, and transportation facility improvement in order to induce X to provide it with terminalling, storage, and transportation services. X also represents that the sole purpose of the expansion agreement is to facilitate the terminalling, storage, and/or transportation agreement. Furthermore, X represents that it will only enter into an expansion agreement if it is also entering into a transportation, storage, and/or terminalling agreement with the same customer.

X seeks a ruling that the amounts it receives from terminalling, storage, and transportation customers for construction of terminalling, storage, and transportation facility improvements (or receipt of such improvements from customers) under the expansion agreements for the terminalling, storage, and transportation of crude oil, refined petroleum products, and LPG will constitute 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 § 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” includes income and 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).

H.R. Rep. No. 495, 100th Cong., 1st Sess. 947 (1987), 1987-3 C.B. 193, 227, in discussing passive-type income, states as follows:

Income of certain partnerships whose exclusive activities are transportation and marketing activities is not treated as passive-type income. For example, the income of a partnership whose exclusive activity is transporting refined petroleum products by pipeline is intended to be treated as passive-type income, but the income of a partnership whose exclusive activities are transporting refined petroleum products by truck, or retail marketing with respect to refined petroleum products (e.g., gas station operations) is not intended to be treated as passive-type income.

The scope of passive-type income was later clarified in H.R. Rep. No. 1104, 100th Cong., 2d Sess. II-17 to II-18 (1988), 1988-3 C.B. 473, 507-508, which states as follows:

In the case of transportation activities with respect to oil and gas and products thereof, the conferees intend that, in general, income from transportation of oil and gas and products thereof to a bulk distribution center such as a terminal or a refinery (whether by pipeline, truck, barge, or rail) be treated as qualifying income. Income from any transportation of oil or gas or products thereof by pipeline is treated as qualifying income. Except in the case of pipeline transport, however, transportation of oil or gas or products thereof to a place from which it is dispensed or sold to retail customers is generally not intended to be treated as qualifying income. Solely for this purpose, a retail customer does not include a person who acquires the oil or gas for refining or processing, or partially refined or processed products thereof for further refining or processing, nor does a retail customer include a utility providing power to customers. For example, income from transporting refined petroleum products by truck to retail customers is not qualifying income (footnote omitted).

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the expansion agreements are integral to the transportation of petroleum and related products. Therefore, the amounts X receives from terminalling, storage, and transportation customers for construction of terminalling, storage, and transportation facility improvements (or receipt of such terminalling, storage, and transportation facility improvements from customers) for the terminalling, storage, and transportation of petroleum and related products under the expansion agreements constitute 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), whether X is a publicly traded

partnership within the meaning of § 7704(b), or whether any other type of income not addressed in this ruling is qualifying income under § 7704(d).

This ruling is directed only to the taxpayer requesting it. However, in the event of a technical termination of X under § 708(b)(1)(B), the resulting partnership may continue to rely on this ruling in determining its qualifying income under § 7704(d)(1)(E). 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 your authorized representative.

Sincerely,

Joy C. Spies

Joy C. Spies
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: