

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:B01
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Date:
April 18, 2013

LEGEND

X =

Y =

State =

Dear _____ :

This letter responds to a letter from X's authorized representatives dated November 13, 2012, 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 (the Code).

FACTS

According to the information submitted and representations made, X is a limited liability company organized under the laws of State. X intends to contribute all or a portion of its assets to a new limited partnership, Y. After the consummation of an initial public offering, interests in Y are expected to be listed and traded on a nationally recognized exchange. Thus, Y will be a publicly traded partnership within the meaning of § 7704(b).

Primarily, Y will mine, process, and market _____ sand, _____, and ceramic products to oilfield service companies, to be used as proppants in hydraulic

fracturing operations. Y will also produce and sell well stimulation products, which increase the efficacy of certain proppants, to the oilfield service companies.

Y's raw sand will be well suited for use as a proppant, and are essential to certain types of production activities. For example, that would not otherwise be economically feasible.

LAW AND ANALYSIS

Section 7704(a), enacted by the Revenue Act of 1987, Pub. Law No. 100-203 (the 1987 Act) provides that, except as provided in § 7704(c), a publicly traded partnership shall be treated as a corporation.

Section 7704(b) provides that, for the purposes of § 7704, the term “publicly traded partnership” means any 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 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)(2) 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).

In discussing the type of qualifying income described in § 7704(d)(1)(E), the Conference Report accompanying the 1987 Act, states as follows:

Income and gains from certain activities with respect to minerals or natural resources are treated as passive-type income. ...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.

H.R. REP. NO. 495, 100th Cong., 1st Sess. 947 (1987), 1987-3 C.B. 946-947.

Based solely on the facts submitted and representations made, we conclude that income derived by Y from the mining, processing, and marketing sand, , and ceramic products for sale to oilfield service companies, , constitutes qualifying income within the meaning of § 7704(d)(1)(E).

Except as expressly provided herein, we express or imply no opinion 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 Y meets the 90 percent gross income requirement of § 7704(c) in any taxable year.

This ruling is directed only to the taxpayer requesting it. However, in the event of a technical termination of Y 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 X's authorized representative.

Sincerely,

David R. Haglund

David R. Haglund

Chief, Branch 1

Office of the Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes

cc: