

capacity to such customers. In connection with and in support of the provision of storage capacity, X also provides substantial services to such customers.

X enters into contracts directly with its storage customers and earns income under such contracts by (1) providing frac tanks (“Storage Capacity”), (2) providing related equipment and connection services integral to the provision of the frac tanks (“Connection Equipment and Maintenance Service”), and (3) performing services provided in connection with and in support of the provision of storage capacity (“Fluid Storage Maintenance”). In limited circumstances, X enters into contracts with storage customers solely for Storage Capacity and Connection Equipment.

When providing customers with Storage Capacity, X is generally responsible for the mobilization and demobilization of frac tanks to its customers’ worksites, which includes the transportation of the frac tank from X’s facility to a customer’s worksite, as well as the return of the frac tank to X’s facility at the conclusion of the customer job. Such transportation activities are generally conducted with trucks owned and operated by X; however, from time to time, such transportation activities may be conducted with trucks sub-contracted by X.

When providing customers with Connection Equipment and Maintenance Service, X will generally be responsible under its customer contracts for providing ancillary equipment to its customers such as hoses, fittings, electric pumps and J stands, which are necessary to render the frac tanks functional to its customers (the “Connection Equipment”). In such circumstances, X provides the connection services and is responsible for the proper functioning of the frac tank and all of the ancillary equipment during the term of the contract with its customers (the “Connection Maintenance Service”). Such responsibility requires employees of X to maintain a regular presence at its customers’ worksites. In many cases, employees of X are required to be at customer worksites for monitoring and maintenance of X’s frac tanks and related equipment on a daily basis.

When providing customers with Fluid Storage Maintenance, X is generally required to monitor and perform required maintenance with respect to its frac tanks both during and after the fracturing process is complete, and, when a frac tank has reached its storage capacity with respect to flowback and produced water, must empty the tank, transport and arrange for the proper disposal of the flowback and produced water. For flowback and produced water that will not be treated on-site, X generally dispatches a vacuum truck, which is a heavy duty transportation vehicle used to transport brine water and other fluids from an oil or gas well to a third party waste disposal facility, to transfer the flowback and produced water from the frac tank to a truck so that the flowback can be transported away from the site. Such activities are conducted with vacuum trucks owned and operated by X.

X and LP have requested a ruling that income derived from the provision of storage capacity, including the provision of frac tanks and phase separators and ancillary

services, in connection with oil and natural gas and geothermal energy production, hydrostatic natural gas pipeline testing and refinery turnarounds, each of which constitutes a part of the exploration, development, production, processing, refining or transportation of natural resources, will constitute qualifying income under § 7704(d)(1)(E).

Section 7704(a) provides generally 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 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) exempts from treatment as a corporation any publicly traded partnership for any tax year if the partnership meets the gross income requirements of § 7704(c)(2) for that year and each preceding tax 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 for any tax year if 90% or more of the partnership's gross income for that year consists of qualifying income.

Section 7704(d)(1)(E) defines "qualifying income" to include income and gains derived from the exploration, development, mining or production, processing, refining, transportation, or marketing of any mineral or natural resource.

Based solely on the facts submitted and the representations made, we conclude that the income derived by X from customer contracts to provide Storage Capacity, Connection Equipment and Maintenance Service, and Fluid Storage Maintenance, each of which constitutes a part of the exploration, development, production, processing, refining or transportation of natural resources, will constitute qualifying income under § 7704(d)(1)(E). However, in the case where X earns income under contracts solely for Storage Capacity and Connection Equipment, such income will not constitute qualifying income under § 7704(d)(1)(E).

This ruling is directed only to the taxpayers requesting it. However, in the event of a technical termination of LP 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). Further, in the event that X is not disregarded as separate from LP for federal income tax purposes within the meaning of Treas. Reg. § 301.7701-3, X may continue to rely on this ruling in determining its qualifying income under § 7704(d)(1)(E).

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion as to whether X is taxable as a partnership for federal tax purposes.

According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

Richard T. Probst
Senior Technician Reviewer, Branch 3
(Passthroughs & Special Industries)

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