

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201418021**
Release Date: 5/2/2014
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:PSI:B02
PLR-133198-13
Date:
October 25, 2013

Legend

X =

Y =

n1 =

n2 =

State =

Dear _____ :

This responds to your letter dated July 22, 2013, 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 is a publicly traded partnership within the meaning of § 7704(b). X represents that it is engaged in diversified business activities focused on coal, oil and natural gas, and related energy infrastructure. X, itself and through affiliated operating limited partnerships, limited liability companies, or disregarded entities, (i) manages Y, a joint venture of which X owns a n1% interest, engaged in the mining of coal, and (ii) provides energy

infrastructure support services, including construction of drill pads, access roads, and fluid storage pads.

Y engages in the mining of coal and currently produces premium metallurgical coal from two company-operated underground mines. As manager of Y, X oversees the day-to-day business affairs and operations of Y. Examples of X's management activities include engineering, mine planning, personnel management, asset procurement and maintenance, and financial management and controls, but X also performs and will perform in the future any other management activities needed by Y. For its services as manager, X receives n2% of the gross sales price of coal mined, produced and sold by Y. X is also reimbursed for costs it incurs on behalf of Y on a monthly basis. X represents that Y does not market or sell its coal to any end users at the retail level.

The complex process of exploration and production of natural resources also requires energy infrastructure, including suitable foundations and surfaces for drill pads, access roads, and fluid storage. A drill pad is a location housing the wellhead for one or more horizontally drilled wells. Although a drill pad may range in size depending on a number of factors, including the number of well heads to be placed on the pad, a typical drill pad covers between 2 and 5 acres of land. The drill pad is cleared, leveled and typically covered with crushed rock to control mud and dust during the drilling process.

The targeted locations for many drilling sites are located in remote locations with limited or no access to roads. Access roads provide a critical link to the well for drilling operators and oilfield services companies that supply each well with supplies. In addition to the rig itself that must be moved and removed from the drill pad, operators, oilfield services companies and other parties require access to the well. For example, oilfield service companies must access the well to deliver liquid mud, proppants, and other supplies needed for hydraulic fracturing, and regulators or other inspectors must have access to the well to ensure operator compliance with regulatory and safety requirements. Without drill pads and access roads, the exploration and production of oil and natural gas via hydraulic fracturing or other onshore drilling would be significantly curtailed.

Fluid storage pads are also a necessary component to the drilling process. Hydraulic fracturing is a water-intensive process, and a typical well can require from 2 to 4 million gallons of water over the life of the well. Where water is not available via pipeline, water will generally be delivered via truck. Fluid storage pads fulfill the critical role of storing the water used in hydraulic fracturing near the wellhead.

In addition to constructing drill pads, fluid storage pads and access roads as described above, X also provides heavy equipment and trained personnel to oil and natural gas producers in the event such producers or oilfield service companies require additional support services in mobilizing or demobilizing their drilling, completion or production activities.

X has requested a ruling that the gross income that X derives in the form of management fees, cost reimbursements and cost-sharing payments related to X's management and operation of mining, production, processing, and sale of coal on behalf of Y, and the gross income X derives from its energy infrastructure support services described above is qualifying income within the meaning of § 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 substantial equivalent thereof).

Section 7704(c)(1) provides that section 7704(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 that X derives gross income in the form of management fees, cost reimbursements and cost-sharing payments related to X's management and operation of mining, production, processing, and sale of coal on behalf of Y, and from X's energy infrastructure support services described above, 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 X is a partnership for federal tax purposes.

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 this ruling may not be used or cited as precedent.

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,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes

cc: