

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:01
PLR-135293-15

Date:
April 18, 2016

Legend

X =

State =

Dear :

This responds to your letter dated October 19, 2016, and subsequent correspondence submitted on behalf of X, requesting a ruling under section 7704(d)(1)(E) of the Internal Revenue Code.

FACTS

According to the information submitted, X is a limited liability company organized under the laws of State. As part of an initial public offering (IPO) for a to-be-formed partnership (Partnership), X intends to contribute assets related to its fluid handling and disposal activities. After completion of the IPO, Partnership will be a publicly traded partnership within the meaning of § 7704(b). X represents that Partnership will earn income by providing fluid management and disposal services to customers engaged in the exploration for and development and production of oil and natural gas.

Partnership will supply fluids for drilling and fracturing operations and provide fluids and solid waste disposal services to oil and gas producers. X represents that Partnership will supply drilling and fracturing fluids, including fresh water, brine, drilling mud, lubricants, and other injectants for use in drilling and hydraulic fracturing. The drilling mud will be recycled or will be produced from by-products of Partnership’s disposal services. The remaining products will be sourced from third parties. The fluids will generally be transported to the well site by third party trucks or pipeline. Partnership’s personnel will be at the well site on a regular basis to work with production teams to

coordinate deliveries and will remotely monitor fluid levels to ensure producers a continuous supply of fluids.

X represents that Partnership also will store, treat, and dispose of flowback produced water and other drilling production waste, generally using salt water disposal (SWD) wells. Flowback and produced water will typically be transported to Partnership's SWD wells by third party truck or pipelines; however, Partnership anticipates building its own pipelines for such transportation. X represents that Partnership may expand its operation to include fluid treatment so as to be able to either release the treated fluids into the groundwater or use the recycled fluids in future drilling and fracturing operations. Partnership will also provide disposal services for used drilling mud and drill cuttings that surface during the drilling and production of oil and gas and collect on tank bottoms.

In connection with its disposal services, Partnership will provide truck and tank washout services. Storage tanks, trucks, and other equipment that store and transport flowback, produced water, and other drilling and production waste must be properly cleaned and maintained to prevent rust and corrosion. Failing to properly clean these items could result in damage to tanks and potential leakage of hazardous fluids.

Partnership will also earn income from selling hydrocarbons and other minerals and natural resources that are collected as part of the disposal process.

X makes the following representations:

1. Partnership will provide personnel for its fluid management and disposal services. Partnership's personnel will have specialized knowledge, training, and experience to perform these services.
2. The equipment used in, and the personnel training associated with, the fluid management and disposal services have no utility outside of oil and gas exploration. Under legal and environmental restrictions, the saltwater disposal wells are restricted to storing and disposing of waste associated with exploration and production activities, and are thus not easily converted to other use.
3. Processing and treatment of flowback fluids and produced water is required prior to injection into a disposal well in order to comply with governmental regulations and industry standards.
4. The production of oil and gas using the hydraulic fracturing process would not be commercially viable without fluid management and disposal services.

LAW & ANALYSIS

Section 7704(a) provides that, except as provided in section 7704(c), a publicly traded partnership will 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 section 7704(a) does not apply to a publicly traded partnership for any taxable year if such partnership meets the gross income requirements of section 7704(c)(2) for the 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) provides, in relevant part, that a partnership meets the gross income requirements of section 7704(c)(2) for any taxable year if 90 percent or more of the gross income of the partnership for the taxable year consists of 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, and timber).

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that gross income derived by X's newly formed Partnership from its fluid management and disposal services constitutes qualifying income within the meaning of § 7704(d)(1)(E). In addition, income derived from Partnership from selling the filtered hydrocarbons and other recoverable minerals that are collected as part of the disposal process constitutes qualifying income within the meaning of § 7704(d)(1)(E) so long as the sales are not to end users at the retail level. This ruling is not applicable to any income derived by Partnership from the delivery of water or other injectants, including recycled produced water, to affiliates or third parties where Partnership does not also collect and clean, recycle, or otherwise dispose of the resulting produced water and drilling production waste after use.

Except as expressly provided herein, no opinion is expressed or implied concerning 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) in any taxable year for which this ruling may apply.

The ruling contained in this letter is 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 ruling, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. However, in the event of a technical termination of X's Partnership 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 letter 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 representatives.

Sincerely,

Laura C. Fields

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

Enclosures (2)

Copy of this Letter

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