

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201637007**
Release Date: 9/9/2016
Index Number: 7704.03-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:03
PLR-140710-15

Date:
June 13, 2016

LEGEND

X =

State =

Dear :

This letter responds to your letter dated December 14, 2015, submitted on behalf of X by its authorized representative, requesting a ruling under section 7704(d)(1)(E) of the Internal Revenue Code (Code).

FACTS

According to the information submitted, X is a publicly traded limited partnership organized under the laws of State. X is engaged in certain midstream operations, and, as a part of that business, provides fluid, solids, and oilfield waste handling, treatment, and disposal services to customers engaged in the exploration for, and development and production of, oil and natural gas.

As a part of its fluid management services, X supplies and transports drilling and fracturing fluids, including fresh water, brine, and other chemical injectants, for use in drilling and hydraulic fracturing. The brine and other injectants are obtained by X through fluid separation and chemical recovery activities as part of its recycling and disposal services, and then marketed by X exclusively to producers for use in the exploration and production of oil and natural gas through the fracturing process. X transports the fluids to producers via trucks, tanks, and, in some cases related to fresh water supply, pumps and pipelines. These pipelines include: (1) temporary pipelines owned, operated, maintained, and controlled by X and dedicated specifically to the

transportation of fluids to producers for use in fracturing; (2) water delivery pipeline systems that will be developed, constructed, owned, operated, maintained and controlled by X for the specific purpose of transporting fluids to producers for use in the fracturing process; or (3) water delivery pipeline systems that are managed and operated—but not owned—by X. During the provision of these services, employees of X (or employees of an affiliate of X working under the supervision, direction and control of X) remain present at both the fluid source and the well site to oversee the process and ensure proper functioning of the pipelines and related equipment.

As a part of its transportation services, X also provides inter-well site transportation via pipelines when requested by its oil and natural gas producer customers. These transfer services include: (a) transporting fluids between producers' well sites on a single producing property, (b) transporting fluids between frac tanks for a producer at a single well site, and (c) transporting fluids for a producer between one or more well sites and/or a treatment plant.

X also treats, recycles, and disposes of flowback, produced water, pit water, and other drilling and production wastes, so that such wastes can be recycled or disposed of consistent with environmental regulations. Flowback and produced water may be transported to X's recycling facilities or disposal sites by truck or pipelines. X's recycling activities produce water and fluids that are cleaned and purified for reuse in the oil and natural gas production process. Such activities also result in certain materials (e.g., brine and other chemical injectants) being separated from the contaminated water and fluids during the recycling process, which are then marketed to oil and natural gas producers for reuse. Drilling mud, fracturing fluid waste, drill cuttings, tank bottoms, and NORM (naturally occurring radioactive material) constitute the majority of the waste treated at X's existing disposal facilities, which may include, in the future, special-waste landfills that are authorized to accept certain hazardous waste materials, such as NORM.

In addition, X also provides truck and tank washout services, and recycling or disposal services related to the resulting fluids. 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.

Also in connection with its fluid management and disposal services, X earns income through the provision of frac tanks for temporary storage of water, flowback, produced water, pit water, drill cuttings, and other drilling and production wastes. X represents that X must provide a substantial level of ongoing service to each customer during the term of such customer's use of the frac tank and must maintain a regular presence at the customer worksite.

X also provides hydrocarbon remediation services. As a part of these services, X removes hydrocarbons from the drilling waste at its facilities during the waste treatment and disposal process and sells such reclaimed hydrocarbons.

X makes the following representations:

1. X supervises, directs, and controls personnel for its fluid management, transportation, disposal, washout, and storage services. These activities require personnel with specialized knowledge, unique training, and experience such as training in drill site maintenance, fluid pressure monitoring and spill prevention, operating mechanical and pressure pumps, as well as safety training critical to the operation of X's recycling and disposal facilities.
2. The provision of fluids as well as water transfer services are essential to the completion of oil and natural gas drilling and fracturing operations.
3. Processing and treatment of flowback fluids and produced water is required in order to comply with governmental regulations and industry standards.
4. X's fluid management services require daily involvement and are performed on an ongoing basis throughout the exploration and production life cycle of each producing property. X's recycling and disposal facilities and related service equipment are staffed on a continuous, 24 hour per day basis and are equipped with remote monitoring capabilities.

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 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 from its fluid management, transportation, disposal, washout, and storage services constitutes qualifying income within the meaning of § 7704(d)(1)(E). In addition, income derived by X from its hydrocarbon remediation services performed as part of the disposal process constitutes qualifying income within the meaning of § 7704(d)(1)(E) so long as X does not sell the recovered hydrocarbons to end users at the retail level. This ruling is not applicable to any income derived by X from the delivery and transportation of water, brine, or other injectants where X 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 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 representative.

Sincerely,

/s/

Holly Porter
Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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