

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201722023**
Release Date: 6/2/2017

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 7704.00-00, 7704.03-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-137922-14

Date:
February 28, 2017

LEGEND

X =

State =

Dear :

This letter responds to a letter dated October 3, 2014, submitted on behalf of X by its authorized representative, requesting a ruling under § 7704(d)(1)(E) of the Internal Revenue Code (Code).

FACTS

X is a corporation organized under the laws of State. X intends to form a publicly traded partnership and effect an initial public offering (IPO). The partnership will provide timber processing, transportation, storage, and marketing services. Specifically, after the IPO, the partnership will directly or indirectly conduct some or all of X's current wood pellet and wood chipping business.

Currently, X's wood pellet business consists of the following activities: X acquires timber feedstock including raw logs (that it will debark and chip), mill chips, roundwood chips, bole chips, sawdust, and kiln dried residue from both softwood and hardwood sources (hereinafter, feedstock). After arrival at the facility, the feedstock is screened and size reduced, and then dried in a rotary style dryer to reduce moisture content (except for the kiln dried residue). The dried particles are combined with the kiln dried residue and then size reduced again to achieve uniform consistency before being sent through a pellet mill. The pellet mill operates by forcing the feedstock

through holes under pressure. The intense pressure raises the temperature of the feedstock, which assists in binding the particles into wood pellets without the addition of any binding agents. Blades cut the pellets to size. X stores the wood pellets in pellet silos. These stored pellets are then directly loaded for bulk sales or bagged for sales to third party retailers.

X operates timber processing mills as a part of its current wood chipping business, whereby: (1) logs are debarked; (2) debarked logs are chipped; (3) chips are screened for oversized and undersized chips and re-chipped as needed; (4) chips are stacked for storage, loaded onto trucks or train cars for immediate delivery, or directly conveyed to a customer's facility; (5) bark is separated and sent for separate processing; and (6) bark is screened and distributed to the customer. X may provide just the operating services or X may also finance, construct, and maintain the mill that X operates with its own employees. X typically charges a per ton fee for its processing services, but may also charge a per hour fee coupled with a per month supervisory fee. X may additionally charge a fee that reimburses X's construction costs plus a reasonable rate of return for the facility.

LAW

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 the substantial equivalent thereof).

Section 7704(c)(1) provides that § 7704(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) 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" 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 or timber).

Section 1.7704-4(c)(5) of the Income Tax Regulations provides that an activity constitutes processing if it is performed to convert raw mined or harvested products or raw well effluent to substances that can be readily transported or stored, as described in § 1.7704-4(c)(5). Section 1.7704-4(c)(5)(iv) provides that an activity constitutes processing of timber if it is performed to modify the physical form of timber, including by the application of heat or pressure to timber, without adding any foreign substances. Processing of timber does not include activities that add chemicals or other foreign substances to timber to manipulate its physical or chemical properties, such as using a digester to produce pulp. Products that result from timber processing include wood chips, sawdust, rough lumber, kiln-dried lumber, veneers, wood pellets, wood bark, and rough poles. Products that are not the result of timber processing include pulp, paper, paper products, treated lumber, oriented strand board/plywood, and treated poles.

Section 1.7704-4(c)(7)(i) provides that an activity constitutes transportation if it is performed to move minerals or natural resources, and products under § 1.7704-4(c)(4), (5), or (6), including by pipeline, marine vessel, rail, or truck. Except as provided in § 1.7704-4(c)(7)(ii), transportation does not include the movement of minerals or natural resources, and products produced under § 1.7704-4(c)(4), (5), or (6), directly to retail customers or to a place that sells or dispenses to retail customers. Retail customers do not include a person who acquires oil or gas for refining or processing, or a utility.

Section 1.7704-4(c)(8)(i) provides that an activity constitutes marketing if it is the bulk sale of minerals or natural resources, and products under § 1.7704-4(c)(4), (5), or (6). Except as provided in § 1.7704-4(c)(8)(ii), marketing does not include retail sales (sales made in small quantities directly to end users), which includes the operation of gasoline service stations, home heating oil delivery services, and local natural gas delivery services. Section 1.7704-4(c)(8)(iii) provides that marketing also includes certain activities that facilitate sales that constitute marketing under § 1.7704-4(c)(8)(i) and (ii), including packaging.

Section 1.7704-4(c)(10)(i) provides that, if the partnership is in the trade or business of performing a section 7704(d)(1)(E) activity, qualifying income includes income received to reimburse the partnership for its costs in performing that section 7704(d)(1)(E) activity, whether imbedded in the rate the partnership charges or separately itemized. Reimbursable costs may include the cost of designing, constructing, installing, inspecting, maintaining, metering, monitoring, or relocating an asset used in that section 7704(d)(1)(E) activity, or providing office functions necessary to the operation of that section 7704(d)(1)(E) activity (such as staffing, purchasing supplies, billing, accounting, and financial reporting). For example, a pipeline operator that charges a customer for its cost to build, repair, or schedule flow on the pipelines that it operates will have qualifying income from such activity whether or not it itemizes those costs when it bills the customer.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the income derived from the processing, transportation, storage, and marketing of wood pellets and wood chips constitutes qualifying income within the meaning of § 7704(d)(1)(E).

Except as specifically provided, we express or imply no opinion as to 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 the partnership will meet the 90 percent gross income requirement of § 7704(c)(1) or whether any other type of income not addressed in this ruling is qualifying income under § 7704(d). In addition, this ruling does not apply to retail sales made directly to end users.

This ruling is directed only to the taxpayer requesting it. However, in the event of a technical termination of the 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 it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, we are sending copies of this letter to your authorized representatives.

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 ruling requests, it is subject to verification on examination.

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