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Department of the Treasury
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Person To Contact:
, ID No.
Telephone Number:

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CC:PSI:B02
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Date:
June 27, 2007

Legend

X =

Y =
M =
N =
O =
P =
Q =
R =
S =
T =
U =
V =
W =

a =

State =

Dear :

This responds to your letter dated November 17, 2006, 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 is principally engaged in the transportation, storage and distribution of refined petroleum products. X operates a number of pipeline systems and terminals owned by third parties unrelated to X. X, directly and through its operating subsidiaries, M and N, serves as the operator of third-party owned pipeline systems, O, P, Q, R and S, and terminals T and U.

Specifically, X serves as the contract operator of O, P and Q, pipelines owned by Y. Pursuant to the terms of the operating agreement between X and Y, X is responsible for all transportation of petroleum products through O, P and Q. In this regard, X performs all functions associated with movement of the product, including reviewing shipment orders and scheduling shipments, taking delivery from customers at various inter-connect points, monitoring system capacity, and verifying that shipment orders do not exceed capacity, performing the tasks necessary to physically move product through the pipeline, metering the quantities of petroleum products, and off-loading the product for receipt by customers. In addition, X is responsible for staffing the operations of O, P and Q, and employing all personnel who physically control pipeline operations. X is responsible for conducting routine maintenance, identifying and purchasing all supplies necessary to operate O, P and Q. X administers all rights-of-way, easements, leases, licenses, and other property rights and interests acquired in connection with O, P and Q. X is also responsible for movement and stock accounting records, billing, accounting, financial reporting and treasury functions for O, P and Q.

X also serves as the contract operator of R, a pipeline also owned by Y. Pursuant to the terms of the operating agreement between X and Y, X is responsible for all transportation of a through R. In this regard, X performs the functions associated with the movement of the product, including reviewing shipment orders, taking delivery from several refineries, monitoring system capacity and verifying that shipment orders do not exceed such capacity, performing the tasks necessary to physically move product through the pipeline, metering the quantities of petroleum products, and off-loading the product for receipt at several refineries. In addition, X is responsible for staffing the operations of R, and employing all personnel who physically control pipeline operations. However, scheduling of R is handled by an employee of Y. X is responsible for conducting routine maintenance, identifying and purchasing all supplies necessary to operate the pipeline, and taking any necessary actions to keep R operating in compliance with various legal requirements. X administers all rights-of-way, easements, leases, licenses, and other property rights and interests acquired in connection with R. X is also responsible for movement and stock accounting records, billing, accounting, financial reporting and treasury functions for R.

X, through its operating subsidiaries, M and N, currently acts as the operator of S, which consists of a number of different pipelines owned by several unrelated parties.

Pursuant to the terms of the relevant operating agreements between M and V (a third party unrelated to X), and between N and W (another third party unrelated to X), M and N operate, maintain, and repair the pipelines comprising S. M and N perform the functions directly associated with the movement of product through S, including performing the tasks necessary to physically move product through S, coordinating pipeline operations and fuel shipments, communicating product movement through S, generating reports regarding the operations of S, developing schedules for the delivery of product, and coordinating product delivery. In addition, M and N are responsible for staffing S, and employing the personnel who physically control pipeline operations. M and N are also responsible for conducting routine maintenance and providing and maintaining records regarding the operation of the pipelines as required by law.

X, through its operating subsidiary, N, currently serves as the contract operator of the terminals T and U. T and U consist of above-ground storage tanks and related facilities owned by N and leased to W, and above-ground storage tanks and related facilities owned by W. Pursuant to the terms of the operating agreement, N operates, maintains, repairs, and inspects T. In this regard, N accepts petroleum products into T, stores those products, delivers those products in accordance with instructions provided by W, measures the quantity and quality of product in and out of T, and maintains the integrity of product stored in T. In addition, N is responsible for staffing T and employing personnel who physically control it. W does maintain one representative on site who monitors operations on behalf of W. N is responsible for conducting routine maintenance of T.

At U, refined petroleum products are off-loaded both through T and by truck. Petroleum products that are off-loaded by truck at U are delivered to customers in other areas. W arranges for the truckload sales of refined petroleum product stored in U delivered to customers in other areas, but N performs services relating to loading the trucks at U and charges the trucking companies a per gallon throughput charge for handling the refined petroleum products.

In exchange for its services under each of the operating agreements described above, X receives fixed operating fees and reimbursement of certain expenses and other amounts. In addition, as stated above, X receives a throughput charge on refined petroleum products loaded unto trucks at U.

X has requested a ruling that its income derived from operating pipeline systems O, P, Q, R and S, and from operating terminals T and U, constitute qualifying income under section 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 7701(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 the income derived by X from operating the pipeline systems O, P, Q, R and S, and from operating terminals T and U, is qualifying income within the meaning of section 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. In particular, no opinion is expressed as to whether X meets the 90 percent gross income requirement of section 7704(c)(1) in any taxable year for which this ruling may apply.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2007-1, 2007-1 I.R.B. 1, 49. However, when the criteria in section 11.06 of Rev. Proc. 2007-1, 2007-1 I.R.B. 1, 50 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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.

Sincerely,

J. Thomas Hines
Branch Chief, Branch 2
(Passthroughs & Special Industries)

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

cc: