Internal Revenue Service

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Date:
June 07, 2017

LEGEND

X =

State =

Date =

Entity =

Pipeline =

a =

b =

c =

Agreement 1 =

Agreement 2 =

Agreement 3 =

Producers =

Leases =

Lateral =

Facility 1 =

Facility 2 =

Dear :

This letter responds to a letter dated January 31, 2017, submitted on behalf of X by its authorized representatives, requesting a ruling under section 7704(d)(1)(E) of the Internal Revenue Code (Code).

FACTS

X is a limited partnership formed under State law on Date. X owns, operates, develops, and acquires pipelines and other midstream assets. Among these assets is a a% interest in Entity, which owns the Pipeline.

Pursuant to Agreement 1, Agreement 2, and Agreement 3 (collectively, the Agreements), Entity transports crude oil production of the Producers from the Leases to designated delivery points. Oil produced is transported by Entity on its pipeline (the Lateral) running from Producers' Facility 1 to a tie-in (located at Facility 2) to the Pipeline. Entity leases space from the Producers at Facility 2 for a pump station and other pipeline assets.

Pursuant to the Agreements, the Producers dedicate crude oil produced from the Leases for transportation on the Lateral. Entity agrees to accept and transport the dedicated crude oil delivered by the Producers at the designated point of receipt at Facility 1. Entity is also responsible for operating the Lateral and the Pipeline through its contracted operator.

The Agreements provide for a transportation fee based on the barrels of oil transported. The shippers pay a separate fee for transportation on the Lateral and for transportation on the Pipeline. During the first b years after first oil, the per-barrel rate for transportation on the Lateral is

The transportation rate on the Pipeline is

Entity has rights in certain cases to impose a repair surcharge to cover repairs on the Lateral and the Pipeline.

Persons other than the Producers may be the shippers of record if they purchase the crude oil from the Producers at Facility 1. The shippers are then responsible for the rates set forth in the Agreements.

If Agreement 3 had been terminated prior to first oil because the Producers elected to not complete construction of Facility 1, the Producers would have been liable to Entity for certain costs expended with respect to the construction of the Lateral, plus a service charge. Agreement 3 also provides that the Producers are responsible for reimbursing Entity for reimbursable costs associated with certain direct and indirect costs associated with design, engineering, construction, installation, maintenance, repair, replacement, and abandonment of certain equipment located at or in the vicinity of Producers' Facility 1. These reimbursable costs are reimbursed at cost plus a b% service charge.

LAW & ANALYSIS

Section 7704(a) provides that, except as provided in § 7704(c), a publicly traded partnership will be treated as a corporation.

Section 7704(c)(1) provides that § 7704(a) does not apply to a publicly traded partnership for any taxable year if such partnership meets the gross income requirements of § 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 § 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).

Section 1.7704-4(a) of the Income Tax Regulations provides that qualifying income is income and gains from qualifying activities with respect to minerals or natural resources as defined in § 1.7704-4(b). Qualifying activities are section 7704(d)(1)(E) activities (as described in § 1.7704-4(c)) and intrinsic activities (as described in § 1.7704-4(d)).

Section 1.7704-4(c) provides that section 7704(d)(1)(E) activities include the exploration, development, mining or production, processing, refining, transportation, or marketing of any mineral or natural resource.

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. Transportation includes moving or carrying (whether by owner or operator) products via pipelines, gathering systems, and custody transfer stations and providing storage services.

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 the representations made, we conclude that gross income derived by X from the Agreements, as that income is described in the Facts section of this letter, is qualifying income under section 7704(d)(1)(E).

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)(2) 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 representatives.

Sincerely,

/s/

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

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