

**BGPLLC**

August 3, 2015

**Via Federal eRulemaking Portal**

Internal Revenue Service  
CC:PA:LPD:PR (REG - 132634 - 14)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

**Re: Comments on Code Section 7704 Proposed Regulations (REG - 132634 - 14)**

Dear Sir or Madam:

Thank you for taking comments on your proposed regulations ("**Proposals**") under section 7704(d)(1)(E) of the Internal Revenue Code of 1986 ("**Code**") relating to qualifying income from the processing of ores and minerals.

We appreciate the significant effort the Internal Revenue Service ("**Service**") is undertaking to clarify what is and isn't qualifying income under the Code. Your efforts in proposing clarifying regulations and receiving comments from affected parties in order to have clear and improved final regulations should help you, your regulatory process and the public that you serve.

First, the Service made a thoughtful private letter ruling ("**PLR**") regarding processing when you issued our PLR on September 24, 2010. I refer you to the Service's PLR-12366-10.

We have relied on this PLR and it has under-pinned much that we have done over the last 5 years. Our investors particularly relied and continue to rely on our PLR.

We send this letter to comment on the Proposals as to the definition of processing.

We have reviewed section 7704(d)(1)(E) of the Code, the legislative history, the regulatory history and comment letters to date relating to your Proposals. We are currently a small company but we understand the common usage of the term "processing" *both today and at the time the Code was written and passed*. The common dictionary verb form definitions of processing were and are:

- a) *To convert into a marketable form by a special series of steps, or*
- b) *A systematic series of mechanical or chemical actions directed to some end.*

Section 7704(d)(1)(E) says that if the above actions are performed on ores or minerals, then these actions generate qualifying income under the Code.

In most cases, the most common construction for defining an activity is the most likely and accurate definition. ***In your Proposals, eliminating the processing activity by shrinking it into the completely different definition of refining could not be what Congress intended.***

Otherwise, *why would Congress have included the word processing, which by common definition is completely different from the common definitions of refining?*

As to the comment letters to date, we completely support the commentary in the letters from Vinson&Elkins and SunCoke Energy ("The Letters") as to the definition of processing, the Code, the legislative and regulatory history as pertaining to processing and statutory construction under the Code. We believe the commentary in The Letters is straightforward, logical, factual and compelling. Their commentary on common usage, consistency and statutory construction is particularly relevant. The Letters' recommendations on final regulatory language should be very helpful to the Service in proposing final regulations.

Once again, we are not lawyers nor are we a large company - maybe we represent the common person. We strongly believe, very simply, that the Code's 27-year fact pattern supports what Congress intended, and the Service has agreed, before the Proposals: that processing under Section 7704(d)(1)(E) meant and means the common definitions of processing. Our PLR and other prior PLRs document this.

We respectfully suggest that the Service do the fair and right thing by doing the following:

- a) Adhere to the common practice definitions of processing, which you recognized in your issuing of our PLR. The Vinson&Elkins commentary on Congressional focus in Section 7704(d)(1)(E), as being on source products and not on processing outcome products, is factual and logical. We agree with The Letters as to Congressional intent, as to your prior ruling history and as to processing being a completely different activity than refining.

Adopt the definition of the processing of a mineral or natural resource under Section 7704(d)(1)(E) as "a systematic series of mechanical or chemical actions directed to converting a source material into a more marketable form."

- b) If the Service's final regulations do not follow the common definition of processing and find a different interpretation of Congressional intent, legislative history and your rulings history, **then please grandfather our PLR in perpetuity.**

If the Service takes either of the above suggested, actions then our company, our employees and our investors would thank you for the consistency.

*For all of the above reasons, please agree that the right and fair thing to do is to affirm your previously issued PLR-12366-10. It was issued significantly before the Proposals, and the Service agreed at that time that our activities generated qualifying income.*

We would be pleased to discuss these comments with you if that would help.

Respectfully,

BGPLLC

By: Madelyn Hunt  
Madelyn Hunt