

IRS Letter Rulings and TAMs (1954-1997), UIL No. 7704.03-00, Letter Ruling 9712024, (Dec. 20, 1996), Internal Revenue Service, (Dec. 20, 1996)

Letter Ruling 9712024, December 20, 1996

CCH IRS Letter Rulings Report No. 1047, 03-26-97

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Uniform Issue List Information:

UIL No. 7704.03-00

[Code Sec. 7704]

This responds to a letter dated August 5, 1996, written in your behalf requesting a ruling that certain income to be earned by a partnership will constitute "qualifying income" under §7704(d)(1)(E) of the Internal Revenue Code.

P is a corporation organized under State A and operates as a holding company for U.S. and foreign Operations. P also is the common parent of an affiliated group that files a consolidated federal income tax return. S is an indirect, wholly owned subsidiary of P and is organized under State A law. S operates a major integrated ***** and marketing business.

S proposes to organize a State A limited partnership (MLP). S will own a 1% general partner interest and the remaining interests will be limited partner interests. It is anticipated that the limited partner interests will consist of approximately 50% in common units, which will be sold in an initial public offering, and the balance in subordinate units held by S.

MLP will form an operating limited partnership (PRS), which will acquire and operate S's integrated ***** and marketing business. PRS will ***** and will also purchase ***** from a subsidiary of S. ***** PRS anticipates that over *****% of its ***** will be sold to governmental authorities for ***** maintenance. This will generally be sold through public bidding, with awards based on the lowest delivered price. All shipments will be made by third party shippers and vendors, and transportation costs are included in the bid price. PRS will also contract with third parties for storage, receiving, and processing orders from governmental authorities, and for arranging delivery.

P represents that MLP will be classified as a partnership for federal tax purposes until the closing of the public offering of the common units, when MLP will be a publicly traded partnership under §7704(b). P, however, intends that 90% or more of MLP's gross income will be qualifying income under §7704(d), allowing MLP to meet the gross income requirements of §7704(c)(2) and remain classified as a partnership.

Section 7704(a) treats a publicly traded partnership as a corporation for purposes of Code. Under §7704(c)(1) and (2), however, §7704(a) does not apply for any taxable year if 90% or more of the partnership's gross income for the taxable year consists of qualifying income.

Under §7704(d)(1)(E), "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).

Accordingly, we rule that income from the sale of ***** by PRS to governmental entities will be qualifying

income for purposes of §7704 .

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Except as specifically set forth above, no opinion is expressed as to the federal tax consequences of the above described facts under any other provision of the Code.

Pursuant to a power of attorney on file in this office, a copy of this letter will be sent to P's authorized representative.

Sincerely yours, Brian M. Blum Acting Assistant Branch Chief, Branch 1 Office of the Assistant Chief Counsel (Passthroughs and Special Industries)