

IRS Letter Rulings and TAMs (1998-2011), UIL No. 7704.03-00, Letter Ruling 9822035, LTR 199822035, Internal Revenue Service, (Feb. 26, 1998)

Letter Ruling 9822035 , February 26, 1998

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Uniform Issue List Information:

[Code Sec. 7704]

UIL No. 7704.03-00

Effect of reorganization plans

This responds to your letter dated November 10, 1997, submitted on behalf of X and requesting a ruling that certain income earned by a partnership will constitute "qualifying income" under §7704(d)(1)(E) of the Internal Revenue Code.

FACTS

X is a limited partnership organized under State law in Year 1. X owns Y% of the interests in several partnerships (OLPs). X owns and operates timberland properties and timber processing operations in the United States. X's business consists primarily of the growing of timber for sale in domestic and export markets and the processing of timber into lumber and chips. In addition to its direct timber operations, X, through its interests in OLPs, owns and operates a wood products purchase and resale business. This business acquires wood products and poles (among other items) from lumber mills (including lumber mills owned indirectly by X through its interests in OLPs).

Wood products consist of softwood or hardwood lumber derived from the operation of a primary or secondary sawmill. Most of the wood products purchased by the OLPs are in untreated and unsealed form. Some of these products are treated for the account of OLPs and sold by the OLPs in treated form. Treatment generally consists of the application of a preservative or a fire retardant by applying the treatment to the wood under pressure. Sealing is done by the application of four to eight coats of a sealer. However, some of the purchased products have been treated and sealed and are sold as treated or sealed products.

X will also buy and resell poles. Poles are timber logs which have been debarked and, in some cases, cut to standard lengths. The poles are purchased in both treated and untreated form. In some instances, X may acquire untreated poles and have them treated by third parties prior to sale as treated poles. The treatment process for poles is the same as that for wood products.

RULING REQUESTED

Based on these facts, X requests a ruling that the income and gains recognized by X related to the sale of wood products and poles described above constitute income derived from the production, processing, refining, transportation, or the marketing of timber and therefore constitute qualifying income under §7704(d)(1)(E).

LAW AND ANALYSIS

Section 7704(a) treats a publicly traded partnership as a corporation for federal tax purposes. Section 7704 (b) defines the term publicly traded partnership as any partnership whose interests: (1) are traded on an established securities market; or (2) are readily tradable on a secondary market (or the substantial equivalent thereof).

Section 7704(c)(1) exempts certain partnerships from treatment as a corporation for a taxable year if the partnership meets 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. Under §7704(c)(2), a partnership meets the gross income requirements for any taxable year if 90% or more of the partnership's gross income for the taxable year consists of qualifying income.

Section 7704(d)(1)(E) provides that "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).

CONCLUSION

Based solely on the facts submitted and the representations made we conclude that X's income from the sale of wood products and poles described above will be treated as qualifying income for purposes of §7704 (d)(1)(E).

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

This ruling is directed only to the taxpayer on whose behalf it was requested. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent. Temporary or final regulations pertaining to the issue addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked if the adopted temporary or final regulations are inconsistent with any conclusion in the ruling. See section 12.04 of Rev. Proc. 98-1, 1998-1 I.R.B. 7. However, when the criteria in section 12.05 of Rev. Proc. 98-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

This ruling is sent to you, the taxpayer's authorized representative, pursuant to a power of attorney on file with this office.

Sincerely yours, Dianna K. Miosi, Chief, Branch 1, Office of the Assistant Chief Counsel (Passthroughs and Special Industries).