

IRS Letter Rulings and TAMs (1954-1997), UIL No. 7704.03-00, Letter Ruling 9452013, (Sep. 26, 1994), Internal Revenue Service, (Sep. 26, 1994)

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[Code Sec. 7704]

This responds to your letter dated September 20, 1994, and prior correspondence, submitted on behalf of PRS, in which you request a ruling under §7704(d) of the Internal Revenue Code that certain fees earned from the Storage Businesses will constitute "qualifying income."

FACTS

The information submitted discloses that X is a corporation organized under the laws of State 1. X is the parent of a consolidated group of corporations. M is a limited partnership organized under the laws of State 1. M's general partner is Y, a State 2 corporation and member of X's consolidated group. M's limited partners are three other members of X's consolidated group.

PRS will be organized as a limited partnership under the laws of State 1. M will be PRS's sole general partner and will own a percent of PRS. The remaining b percent of the interests in PRS will be limited partnership interests and will consist of approximately c percent in r Units to be publicly traded, and approximately d percent in s Units to be held by M.

PRS assets will consist primarily of its interests in OLP1, OLP2, and OLP3. M will be the sole general partner of OLP1, OLP2, and OLP3, and will own an a percent interest in each. PRS will be the sole limited partner of OLP1, OLP2, and OLP3, and will own a b percent interest in each.

S1, S2, S3, and S4 (collectively the Storage Businesses) are partnerships engaged (or that will engage) solely in the storage of t. S1 is owned e percent by Q and e percent by R. S2 is owned f percent by Z, f percent by T, and g percent by U. S3 is owned e percent by V and e percent by W. S4 is owned e percent by H and e percent by J.

After closing the public offering of PRS units, OLP1, OLP2, and OLP3 will acquire, from X and its affiliates, certain assets including interests in the Storage Businesses, in exchange for cash, the assumption of debt, and general and limited partnership interests in OLP1, OLP2, and OLP3. PRS represents that the percentage of the total interest in capital and profits in each of the Storage Businesses that will be transferred to OLP1, OLP2, and OLP3 will be less than 50 percent. PRS states that it is not expected that there will have been any sales or exchanges of interests in any of the Storage Businesses during the 12-month period immediately preceding the acquisition of interests in the Storage Businesses as described above.

LAW AND ANALYSIS

Section 7704(a) generally treats publicly traded partnerships as corporations for federal tax purposes.

Section 7704(b) provides that the term "publicly traded partnership" means any partnership whose interests are (1) traded on an established securities market, or (2) readily tradable on a secondary market (or the

substantial equivalent thereof).

Section 7704(c)(1) exempts from treatment as a corporation any publicly traded partnership if the partnership met the gross income requirement in §7704(c)(2) for the current taxable year and each preceding taxable year beginning after December 31, 1987, during which the partnership (or any predecessor) was in existence. 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 that taxable year consists of qualifying income. Section 7704(c)(2).

Section 7704(d)(1)(E) defines the term “qualifying income” to include 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).

H.R. Rep. No. 495, 100th Cong., 1st Sess. 947 (1987), 1987-3 C.B. 193, 227, in discussing passive-type income, states as follows:

Income of certain partnerships whose exclusive activities are transportation and marketing activities is not treated as passive-type income. For example, the income of a partnership whose exclusive activity is transporting refined petroleum products by pipeline is intended to be treated as passive-type income, but the income of a partnership whose exclusive activities are transporting refined petroleum products by truck, or retail marketing with respect to refined petroleum products (e.g., gas station operations) is not intended to be treated as passive-type income.

The scope of passive-type income was later clarified in H.R. Rep. No. 1104, 100th Cong., 2d Sess. II-17 to II-18 (1988), 1988-3 C.B. 473, 507-508, which states as follows:

In the case of transportation activities with respect to oil and gas and products thereof, the conferees intend that, in general, income from transportation of oil and gas and products thereof to a bulk distribution center such as a terminal or a refinery (whether by pipeline, truck, barge or rail) be treated as qualifying income. Income from any transportation of oil or gas or products thereof by pipeline is treated as qualifying income. Except in the case of pipeline transport, however, transportation of oil or gas or products thereof to a place from which it is dispensed or sold to retail customers is generally not intended to be treated as qualifying income. Solely for this purpose, a retail customer does not include a person who acquires the oil or gas for refining or processing, or partially refined or processed products thereof for further refining or processing, nor does a retail customer include a utility providing power to customers. For example, income from transporting refined petroleum products by truck to retail customers is not qualifying income. (footnote omitted).

CONCLUSION

We conclude that the fees earned from the operation of the Storage Businesses will constitute “qualifying income” to PRS under §7704(d)(1)(E).

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the above-described facts under any other provision of the Code. Specifically, no opinion is expressed or implied concerning the classification of X, Y, PRS, M, OLP1, OLP2, OLP3, S1, S2, S3, or S4 for federal tax purposes, whether PRS will be a publicly traded partnership within the meaning of §7704(b), or whether any other type of income not addressed in this ruling is qualifying income under §7704(d).

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.

Sincerely yours, Claire E. Toth, Chief, Branch 1, Office of the Assistant Chief Counsel (Passthroughs and Special Industries)

