

IRS Letter Rulings and TAMs (1954-1997), UIL No. 7704.03-00, Letter Ruling 9538016, (June 21, 1995), Internal Revenue Service, (Jun. 21, 1995)

Letter Ruling 9538016, June 21, 1995

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[Code Sec. 7704]

This letter responds to your submission of April 14, 1995, written on behalf of X, in which you requested a ruling that the income and gains to be derived by a proposed publicly traded partnership from the operation of an aluminum smelter constitute "qualifying income" within the meaning of section 7704(d)(1)(E) of the Code.

X owns and operates an aluminum smelter in State, which is its only business. X proposes to transfer substantially all of the assets of the aluminum smelter business to a partnership to be formed to own and operate the aluminum smelter.

The production of aluminum involves three steps, the last of which is the business of X. Bauxite, or aluminum ore, is first extracted from the earth. Bauxite is essentially aluminum-rich dirt, typically containing about 50% alumina by weight.

The bauxite is then refined to produce alumina, an oxide of aluminum. The alumina is separated from the other oxides in the bauxite by causing alumina to react with sodium in a lye bath, creating sodium aluminate. The other oxides are then settled out. Alumina bound with water is participated out of the sodium aluminate by the addition of alumina particles. The bound water is then driven away with heat, leaving pure alumina, a dry white powder.

Finally, the alumina is smelted to produce raw metal aluminum. Alumina is dissolved in large cells in a bath of electrolytes. Electricity is sent through the bath via carbon anodes. The carbon bonds with the oxygen from the alumina to produce carbon dioxide and some carbon monoxide gases. Molten pure aluminum remains, settling under the bath. It is tapped out into crucibles, taken to a casthouse, and there frozen into ingots or alloyed with small amounts of other metals in alloying furnaces and then frozen.

X's sole business is smelting alumina into molten aluminum and then freezing it. X buys alumina as its principle raw material. X sells all of its metal in ingot form. X is not involved in any subsequent rolling, extruding, dye-casting, or other fabrication or semi-fabrication.

Section 7704(a) of the Code provides that a publicly traded partnership shall be treated as a corporation.

Section 7704(c)(1) provides that section 7704(a) shall not apply to any publicly traded partnership for any taxable year if such partnership met the gross income requirements of section 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. For purposes of the preceding sentence, a partnership shall not be treated as being in existence during any period before the first taxable year in which such partnership (or a predecessor) was a publicly traded partnership. Section 7704(c)(2) explains that a partnership meets the gross income requirements of this section for any taxable year if 90 percent or more of the gross income of

such partnership for such taxable year consists of qualifying income.

Section 7704(d)(1)(E) provides, in part, that the term "qualifying income" includes income and gains derived from the processing, transportation or marketing of any mineral or natural resource.

We conclude that the aluminum smelting processes conducted by X constitute the processing of a natural resource, and that income and gains derived from aluminum smelting will constitute qualifying income within the meaning of section 7704(d)(1)(E) of the Code.

Except as specifically ruled upon above, no opinion is expressed concerning the federal income tax consequences of the transactions described above under any other provision of the Code. In particular, no opinion is expressed as to whether Partnership will be classified as a partnership for federal tax purposes.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent. Temporary or final regulations pertaining to one or more of the issues in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked by adoption of temporary or final regulations to the extent the regulations are inconsistent with any conclusion in this ruling.

In accordance with the Power of Attorney on file with this office, we are sending copies of this letter to the taxpayer and to other authorized representatives.

Sincerely yours, William P. O'Shea, Chief, Branch 3, Office of the Assistant Chief Counsel (Passthroughs and Special Industries).