

IRS Letter Rulings and TAMs (1954-1997), UIL No. 7704.05-00, Letter Ruling 9339014, (June 28, 1993), Internal Revenue Service, (Jun. 28, 1993)

Letter Ruling 9339014, June 28, 1993

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[Code Sec. 7704]

This is in reply to your letter, dated December 29, 1992, requesting a ruling that the income of Partnership and Operating Partnership derived from the operation of fertilizer facilities constitutes "qualifying income" within the meaning of section 7704(d)(1)(E) of the Code.

Company formed Partnership and Operating Partnership as limited partnerships under the laws of the state of A, and serves as general partner of both entities. Partnership is a "publicly-traded partnership" under section 7704(b) of the Code. Partnership owns ninety-eight percent of the limited partnership interests of Operating Partnership and conducts its business activities through Operating Partnership. Partnership and Operating Partnership are collectively referred to as the Taxpayer.

Taxpayer's business is the processing of natural gas to produce ammonium nitrate and urea, both plant fertilizers. The intermediary steps in the process produce two by-products, nitric acid and carbon dioxide. Neither by-product is a plant fertilizer. Taxpayer represents that the nitric acid and carbon dioxide are produced only in the amounts needed to produce the final product, fertilizer, and that no excess by-product is created. Taxpayer sells the nitric acid and carbon dioxide without further processing.

Additionally, Taxpayer represents that it purchases natural gas future contracts ("long" future contracts) to secure the cost of the natural gas needed for its fertilizing process. Any income and gain realized by the Taxpayer on the sale of such contracts offsets its cost of purchasing natural gas.

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

Section 7704(b) of the Code provides that the term "publicly traded partnership" means any partnership if (1) interests in such partnership are traded on an established securities market, or (2) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

Section 7704(c)(1) of the Code provides that section 7704(a) shall not apply to any publicly traded partnership for any taxable year if such partnership meets 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 (including fertilizer).

We conclude that Partnership and Operating Partnership's gains from the sale of nitric acid and carbon dioxide and from the disposition of natural gas futures contracts derives from the production of fertilizer and constitutes "qualified income" within the meaning of section 7704(d)(1)(E) of the Code.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the above-described facts under any other provision of the Code. In particular, no opinion is expressed as to whether Partnership or Operating Partnership are classified as partnerships for federal tax purposes.

A copy of this letter should be attached to Partnership and Operating Partnership's next federal income tax return. A copy is provided for that purpose.

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

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