

# IRS Letter Rulings and TAMs (1954-1997), UIL No. 7704.03-00, Letter Ruling 9340031, (July 06, 1993), Internal Revenue Service, (Jul. 6, 1993)

Letter Ruling 9340031, July 6, 1993

CCH IRS Letter Rulings Report No. 867, 10-13-93

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## Uniform Issue List Information:

UIL No. 7704.03-00

[Code Sec. 7704 ]

This responds to a letter dated April 29, 1993, submitted on behalf of P by its authorized representative, in which a ruling is requested that income from certain terminaling activities constitutes qualifying income under section 7704(d) of the Internal Revenue Code.

## FACTS

The information submitted discloses that P is a limited partnership organized under the laws of State. P represents that at all times since its organization, P has been properly classified as a partnership for federal tax purposes. Further, P represents that it is a publicly traded partnership as defined in section 7704(b) of the Code. P also represents that for each of its taxable years, at least 90 percent of P's gross income has been "qualifying income" under section 7704(d). P owns an a percent limited partnership interest in R, a limited partnership. R owns an a percent interest in M, also a limited partnership.

M recently acquired a total of x liquid terminaling facilities. These terminals are necessary for the transportation of petroleum and related products. y M terminals are fed by large long-distance pipelines. The other z terminals are supplied by barge. M maintains "breakout" tanks at its terminaling facilities. These tanks provide a necessary link between two or more forms of product transportation.

In the case of the terminaling facilities supplied by pipeline, the tanks are necessary to accept the high flow rate of the pipeline and to allow the products to then be fed into other modes of transportation that could not accept the high pipeline flow rates. The products supplied by pipeline are transported from the terminaling facilities by truck and pipeline. In the case of the facilities supplied by barge, the tanks are necessary to allow a barge to discharge its cargo as quickly as possible, thus avoiding prohibitive docking costs. In addition, similar to the pipeline situation, the barge discharges at too great a flow rate to supply other forms of transportation directly. The products supplied by barge are transported from the terminaling facilities by truck, pipeline, barge, and rail. Taxpayer represents that M's terminaling activities are an integral part of the transportation of oil and gas and products thereof.

Neither P nor its operating partnerships owns any of the products that pass through the M terminals. M's income consists of throughput charges paid by the owners of those products for the use of M terminals. P represents that M's terminaling activities do not involve retail activity.

## LAW AND ANALYSIS

Section 7704(a) of the Code generally treats publicly traded partnerships as corporations for federal tax purposes. Section 7704(b) provides that the term "publicly traded partnership" means any partnership if (1) interests in that partnership are traded on an established securities market, or (2) interests in that partnership

are readily tradable on a secondary market (or the substantial equivalent thereof).

Section 7704(c)(1) of the Code exempts from treatment as a corporation any publicly traded partnership for any taxable year if the partnership met the gross income requirement in section 7704(c)(2) for that 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 section 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) of the Code defines the term "qualifying income," in part, as income and gains derived from the transportation (including pipelines transporting gas, oil, or products thereof) 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, 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 M's terminaling activities are integral to the transportation of petroleum and related products. Therefore, the fees earned by M from the terminaling of petroleum products and other mineral and natural resources described in section 7704(d)(1)(E) of the Code constitute "qualifying income" to P from "transportation," within the meaning of section 7704(d).

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 P, M, or R for federal tax purposes, whether P is a publicly traded partnership within the meaning of section 7704(b) , or whether any other type of income not addressed in this ruling is qualifying income under section 7704(d) .

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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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