

# IRS Letter Rulings and TAMs (1954-1997), UIL No. 7704.00-00, Letter Ruling 9105015, (Nov. 01, 1990), Internal Revenue Service, (Nov. 1, 1990)

Letter Ruling 9105015, November 1, 1990

CCH IRS Letter Rulings Report No. 727, 02-06-91

IRS REF: Symbol: CC:P&SI:01-TR-31-1770-90

## Uniform Issue List Information:

UIL No. 7704.00-00

[Code Sec. 7704 ]

This is in response to your letter dated May 23, 1990, written on behalf of Partnership, requesting a ruling that the income of Partnership derived from its operation of lumber facilities constitutes "qualifying income" within the meaning of section 7704(d)(1)(E) of the Code.

Partnership is a limited partnership organized in 1989 under the laws of State A. Units of limited partnership interest in Partnership are traded on the New York Stock Exchange. Manufacturing is a corporation also organized under the laws of State A. Ninety-five percent of the common stock of Manufacturing is currently owned by Partnership. The remaining five percent is held by Partnership's general partner.

Partnership owns timber and timberlands, and is engaged in the business of growing and harvesting timber for sale as logs in both export and domestic markets. Partnership currently owns no lumber mill facilities. Partnership has developed a long range business plan which includes the acquisition of lumber mill facilities. As part of the plan, Partnership will acquire various lumber facilities from Manufacturing and, in the future, intends to acquire additional lumber facilities from third parties (hereinafter referred to as "Lumber Facilities").

The sawmilling process applied at the Lumber Facilities to be acquired by Partnership involves removing undesired components of timber, such as bark and knots, from logs, cutting the logs to lumber lengths, and then further cutting the logs into individual boards which will be sold on a wholesale basis. The lumber products derived from processing logs at the Lumber Facilities will be sold by the Partnership in bulk sales on a wholesale basis primarily (i) to Japanese buyers in the export market and (ii) to Manufacturing for resale through its distribution system to the domestic market. Lumber sold to buyers in the export market will be transported in containers by ship. Lumber sold to Manufacturing will be sold primarily f.o.b. at the Lumber facilities. In some instances, lumber will be shipped by truck or by rail to warehouse facilities designated by Manufacturing.

Section 7704(a) of the Code provides that a publicly traded partnership shall be treated as a corporation. Section 7704(b) provides that, for the purposes of section 7704, 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 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 (including timber).

We conclude that the sawmilling processes that Partnership proposes to conduct at the Lumber Facilities constitutes the processing of timber and that income and gains derived from the processing of timber 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 is 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. See section 8.04 of Rev. Proc. 90-1 , 1990-1 I.R.B. 8. However, when the criteria in section 8.05 of Rev. Proc. 90-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to the taxpayer.