Congress of the United States
Washington, DC 20515

July 20, 2015

The Honorable Jacob Lew
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Lew:

We are writing to provide our views regarding a recently released notice of proposed rulemaking regarding qualifying income from the exploration, development, mining or production, processing, refining, transportation, or marketing of any mineral or natural resource by publicly-traded partnerships.

The development and processing of our natural resources are critical activities for the State of Louisiana. The development and use of domestic oil and gas supplies enhances national security, is essential to economic growth, gives rise to significant investments in infrastructure, and provides good-paying jobs to thousands of Americans, including many who live in our state. Since 1987, Congress has specifically allowed businesses operating in these crucial areas to be taxed as partnerships. The use of publicly-traded partnerships provides an appropriate financing tool to support these activities, and allows average investors to participate in domestic natural resource development.

We appreciate the efforts of Treasury and the Internal Revenue Service (IRS) to provide general guidance in this important area through regulations. We understand that since 1987, guidance has developed through private letter rulings (PLRs) issued by the IRS to specific partnerships. We believe the provision of general rules upon which all taxpayers can rely is an important function of appropriate tax administration.

However, we are concerned that in certain instances the proposed regulations provide interpretations that are inconsistent with the underlying statute, congressional intent, and prior IRS rulings. Specifically, we are concerned that the proposed rules unnecessarily restrict the definition of "processing or refining," relative to the statute and legislative history.

Under the statute, "processing" and "refining" are two separately-identified activities that give rise to qualifying income. The proposed regulations would combine "processing" and "refining" into a single defined term, and then impose conditions on its application that do not appear in the statute or legislative history. We believe the definition in the proposed regulations ignores the common usage of the terms "processing" and "refining," and fails to take into account the full range of activities widely understood to comprise the processing or refining of oil, gas, or the products thereof. These complex and varied operations are the very activities for which Congress intended to allow partnership tax treatment. Any attempt to create an exclusive list of permitted activities for industries as dynamic as those involved in the processing and refining of our natural resources is likely to be arbitrary and unfair. Indeed, the very examples provided in the proposed

regulations illustrate this point — where natural resource products produced in one facility give rise to qualifying income but identical products from another facility do not.

We also are concerned that the new definition of processing or refining in the proposed regulations would reverse positions the IRS has taken in certain existing PLRs. Partnerships sought these rulings as a precursor to raising capital, structuring transactions, and conducting their activities. Similarly, average investors relied on these rulings to make what they thought were safe and prudent investments. Now these businesses and investors stand to suffer financially for what appears to be an abrupt and arbitrary change in policy not supported by any reasonable construction of the statute and legislative history. Fairness and common sense dictate that partnerships that obtained rulings from the IRS should be able to rely on these rulings.

We urge you to consider these points as you develop final Treasury regulations. Adopting the unduly restrictive definition of "processing or refining" currently in the proposed regulations will harm American businesses that are dedicated to providing the United States with energy security and individual investors who are seeking stable investments. Finally, reversing previously issued PLRs not only will significantly harm directly affected businesses and investors, but will erode confidence in the tax system in general.

We look forward to hearing your thoughts on these matters.

Sincerely,

David Vitter
U.S. SENATOR

Bill Cassidy
U.S. SENATOR

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