

BLOG POST

MLP Qualifying Income – IRS Releases First PLRs Since Issuance of Proposed Regulations

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On September 11, 2015, the Internal Revenue Service (IRS) released two private letter rulings (PLRs) addressing MLP qualifying income. These are the first PLRs relating to MLP qualifying income to be released since the issuance of the [proposed regulations](#) under Section 7704(d)(1)(E) of the Internal Revenue Code (Code) on May 5, 2015, and the lifting of the approximately year-long “[pause](#)” on PLRs in this area.

Processing, Regasification, Liquefaction and Storage of Natural Gas – PLR 201537007

In PLR 201537007, a taxpayer that intends to become a publicly traded partnership is a partner in a partnership that (1) owns and operates a liquefied natural gas (LNG) receiving and regasification terminal and (2) will construct and own liquefaction capabilities at the terminal so that natural gas can be processed and converted into LNG. LNG is natural gas that has been cooled until it condenses into a liquid in a process referred to as liquefaction. Regasification is the inverse process of liquefaction and involves warming the LNG through a series of vaporizers until the LNG is converted into pipeline quality natural gas.

The MLP will, indirectly, earn income under regasification agreements pursuant to which the customer will pay a fixed fee for the receipt and storage of LNG at the terminal, the processing of the LNG into natural gas, and the delivery of the natural gas to the customer for transportation via pipeline. Also, once the terminal has liquefaction capabilities, the MLP will earn income from the processing of domestic natural gas into LNG and the transportation of such LNG to marine docks for uploading onto an LNG tanker.

The IRS concluded that the MLP’s distributive share of income from contracts for the processing, regasification, liquefaction and storage of natural gas constitutes qualifying income under Code Section 7704(d)(1)(E).

Saltwater Disposal Services and Associated Sale of Skim Oil – PLR 201537014

In PLR 201537014, a taxpayer that intends to become a publicly traded partnership expects to earn income from gathering, transporting, processing, treating and disposing of saltwater produced in the exploration and production of oil and natural gas (produced water). The MLP’s primary assets will consist of ownership interests of saltwater disposal wells and associated assets including pipelines, rights of way and the equipment necessary to operate the saltwater disposal wells. As a complement to its primary business, the MLP will remove skim oil from drilling waste during the disposal process at its facilities and expects to market the skim oil

other than to end users at the retail level.

Consistent with the proposed regulations, the taxpayer represents that: (1) personnel are provided for produced water handling and the personnel received unique training for the operation of the saltwater disposal system; (2) the saltwater disposal system is dedicated to processing, treatment and disposal of produced water, the saltwater disposal system does not have other commercially viable uses, and is not easily converted for other uses; (3) processing and treatment of produced water is required prior to injection into a disposal well in order to comply with governmental regulations and industry standards; (4) the personnel provide necessary onsite services at all saltwater disposal wells on a daily basis; and (5) offsite monitoring services are performed on an ongoing basis and are offered exclusively for use with the MLP's salt water disposal system.

The IRS concluded that income derived by the MLP from the gathering, transporting, processing, treating and disposing of saltwater produced in the exploration and production of oil and natural gas, and income derived by the MLP from the recovery and marketing of skim oil other than to end users at the retail level constitutes qualifying income within the meaning of Code Section 7704(d)(1)(E).

If you have questions regarding a particular PLR, the proposed regulations or MLP qualifying income in general please reach out directly to one of the members of Bracewell's tax team.