

IRS Letter Rulings and TAMs (1954-1997), UIL No. 7704.03-00, Letter Ruling 9338028, (June 25, 1993), Internal Revenue Service, (Jun. 25, 1993)

Letter Ruling 9338028, June 25, 1993

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[Code Sec. 7704]

This is in response to your letter dated May 17, 1993, written on behalf of Partnership, requesting a ruling that the income and gains of Partnership derived from its plywood and medium density fiberboard (MDF) operations constitutes "qualifying income" within the meaning of section 7704(d)(1)(E) of the Internal Revenue Code.

It is represented that the partnership is a publicly traded partnership under section 7704(b) of the Code. Partnership owns timber and timberlands, as well as five lumber mills, and is engaged in the business of growing and harvesting timber for sale as logs in both export and domestic markets. Partnership also owns two plywood plants and one MDF facility.

The plywood operations debark the harvested logs, that are then cut into eight and a half foot lengths and steamed. The steamed logs are placed on a lathe and are rotated against the lathe knife. The cutting edge of the lathe's knife produces a uniform veneer that is peeled off the log onto a conveyer belt. Defects in the veneer are removed. After the veneer sheets have dried, they are glued together in various thicknesses. In a hot press, the glued veneer sheets are bonded together into a single sheet of plywood. Finally, the plywood sheets are trimmed, sanded, and patched based on intended grade and use.

The MDF operation processes chips, sawdust, and planer shavings, that are byproducts of the Partnership's lumber and plywood operations, into MDF panels. These blended raw materials are run through a pressure vessel at 1320 psi steam pressure to soften the material. Then the material is mixed with resins, dried, and pressed together at 2600 psi. The resulting MDF panels are sanded and graded. Finally, to satisfy certain governmental requirements, the boards are passed through an ammonia process to remove and formaldehyde.

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 income and gains from Partnership's plywood and MDF operations constitutes the processing of a natural resource within the meaning of section 7704(d)(1)(E) of the Code, and that Partnership will derive qualifying income therefrom.

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.

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 11.04 of Rev. Proc. 93-1 , 1993-1 I.R.B. 10, 39. However, when the criteria in section 11.05 of Rev. Proc. 93-1 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 Partnership.

Sincerely yours, Dianna K. Miosi, Senior Technician Reviewer, Branch 1, Office of the Assistant Chief Counsel, (Passthroughs and Special Industries)