Final Regulations on Qualifying Income under Section 7704(d)(1)(E)

January 27, 2017
Background

- In March 2014, the IRS implemented a “pause” on private letter rulings (“PLRs”) relating to qualifying income under section 7704(d). The IRS instituted the pause to review existing rulings and to formulate guidance applicable to section 7704(d)(1)(E).
- In March 2015, the IRS announced it would resume the consideration of Private Letter Ruling requests relating to qualifying income.
- On May 5, 2015, the IRS and Treasury Department issued proposed regulations addressing qualifying income under section 7704(d)(1)(E).
- On January 19, 2017, the IRS and Treasury Department issued final regulations addressing qualifying income under section 7704(d)(1)(E).
The Final Regulations – Qualifying Activities
Scope

• The final regulations removed the exclusive list of qualifying activities that appeared in the proposed regulations.

• In response to comments received on the proposed regulations, many of the definitions of section 7704(d)(1)(E) activities were revised.

• Also, the final regulations provide a uniform framework for determining whether oilfield services are qualifying activities. These rules are similar to the framework of the proposed regulations but were modified in response to certain comments received.

• The final regulations are to apply to income earned by a partnership in a taxable year beginning on or after January 19, 2017.

• 10 year transition period through the last day of the partnership’s taxable year that includes January 19, 2027.
Qualifying Activities

• Instead of an exclusive list, the final regulations provide a general definition of the 8 listed activities followed by non-exclusive examples.

• Qualifying activities include:
  1. The exploration, development, mining or production, processing, refining, transportation, or marketing of minerals or natural resources (section 7704(d)(1)(E) activities), and
  2. Certain limited support activities that are intrinsic to section 7704(d)(1)(e) activities (an “intrinsic activity”).
Section 7704(d)(1)(E) Activities
Exploration

• An activity performed to ascertain the existence, location, extent, or quality of any deposit of mineral or natural resource before the beginning of the development stage of the natural deposit.
  - A partnership is engaged in exploration if the partnership: (i) drills an exploratory or stratigraphic type test well; (ii) conducts drill stem and production flow tests to verify commerciality of the deposit; (iii) conducts geological or geophysical surveys; or (iv) interprets data obtained from geological or geophysical surveys.
  - For minerals, exploration also includes testpitting, trenching, drilling, driving of exploration tunnels and adits, and similar types of activities described in Rev. Rul. 70-287 (1970-1 CB 146) if conducted prior to development activities with respect to the minerals.
Section 7704(d)(1)(E) Activities
Development

- An activity performed to make minerals or natural resources accessible.
  - A partnership is engaged in development if the partnership: (i) drills wells to access deposits of mineral or natural resources; (ii) constructs and installs drilling, production, or dual purpose platforms in marine locations (or constructs and installs any similar supporting structures necessary for extraordinary non-marine terrain such as swamps or tundra); (iii) completes wells including by installing lease and well equipment (such as pumps, flow lines, separators, and storage tanks) so that wells are capable of producing oil and gas, and the production can be removed from the premises; (iv) performs a development technique (for example, fracturing for oil and natural gas, or, with respect to minerals, stripping, benching and terracing, dredging by dragline, stoping, and caving or room and-pillar excavation); or (v) constructs and installs gathering systems and custody transfer stations.
Section 7704(d)(1)(E) Activities
Mining or Production

• An activity performed to extract minerals or other natural resources from the ground.
  - A partnership is engaged in mining or production if the partnership operates equipment to extract minerals or natural resources from mines and wells, or to extract minerals or natural from the waste or residue of prior mining or production.
  - Recycling of scrap or salvaged metals or minerals from previously manufactured products is not considered mining or production activities.
• Final regulations clarified the definition that mining or production only applies to extraction of minerals or natural resources.
• Any activities that convert raw mined products or raw well effluent into products is included in the definition of processing.
Section 7704(d)(1)(E) Activities
Processing or Refining: In General

• In contrast to the proposed regulations, the final regulations provide for separate definitions of processing and refining.

• The final regulations provide that an activity is processing if it is performed to convert raw mined or harvested products or raw well effluent to substances that can be readily transported or stored.
  - The final regulations provide industry-specific definitions for qualified processing activities.

• The final regulations provide a list of products that would be considered refining minerals and other natural resources when produced as a result of qualified processing activities. Products not included on the list will not be considered as a product of refining minerals and other natural resources.

• Timber is excluded from the definition of refining.
Section 7704(d)(1)(E) Activities Processing or Refining: In General

- The final regulations removed the MACRS consistency requirement, and physical or chemical change limitation.
- The final regulations do not contain the specific language of the proposed regulations that implemented a manufacturing limitation, however, for each type of resource the final regulations include a list of activities that will be considered processing or refining activities.
  - Generally those activities or services that are regularly performed at field facilities and petroleum refineries are included.
Section 7704(d)(1)(E) Activities Processing: Natural Gas

- An activity is processing if the activity purifies natural gas, including by removal of oil or condensate, water, and nonhydrocarbon gases and separates natural gas into its constituents which are normally recovered in a gaseous phase (for example, methane and ethane) and those which are normally recovered in a liquid phase (for example, propane and butane, pentane and gas condensate).
Section 7704(d)(1)(E) Activities Processing: Crude Oil

An activity is processing if the activity is performed to separate produced fluids by passing crude oil through mechanical separators to remove gas, placing crude oil in settling tanks to recover basic sediment and water, dehydrating crude oil, and operate heater-treaters that separate raw oil well effluent into crude oil, natural gas, and salt water.
**Section 7704(d)(1)(E) Activities Processing: Ores and Minerals**

- An activity is processing of ores and minerals, other than natural gas or crude oil, if it meets the definition of mining processes under Treasury Regulation § 1.613-4(f)(1)(ii), without regard to Treasury Regulation § 1.613-4(f)(2)(iv).
Section 7704(d)(1)(E) Activities

Processing: Timber

- An activity is processing if it merely modifies the physical form of timber.
- Processing includes the application of heat or pressure to timber without adding any foreign substances.
- Processing of timber does not include activities that use chemicals or other foreign substances to manipulate timber’s physical or chemical properties, such as using a digester to produce pulp.
- Products that result from qualified timber processing include wood chips, sawdust, untreated lumber, veneers (unless a foreign substance is added), wood pellets, wood bark, and rough poles.
- Products that are not the result of qualified timber processing include pulp, paper, paper products, treated lumber, oriented strand board, plywood, and treated poles.
**Section 7704(d)(1)(E) Activities**

**Refining: Natural Gas and Crude Oil**

- Refining includes the further physical or chemical conversion or separation process of products from processing activities, and the blending of petroleum hydrocarbons, to the extent they produce items listed in the final regulations under § 1.7704-4(c)(5)(i)(A).

- Further physical or chemical conversion or separation process of products listed in Treasury Regulation § 1.7704-4(c)(5)(i)(A) will be considered refining activity to the extent the resulting product is also on the list.
Final Regulations: Example 1
Petrochemical products sourced from an oil and gas well

• Z, a publicly traded partnership, chemically converts a mixture of ethane and propane (obtained from physical separation of natural gas) into ethylene, propylene, and other gases through use of a steam cracker. Z sells the ethylene and propylene in bulk to a third party.

• Ethylene and propylene are products of refining as provided in Treasury Regulation § 1.7704-4(c)(6)(i). Therefore, Z is engaged in a section 7704(d)(1)(E) activity. The income Z receives from the sale of ethylene and propylene is qualifying income for purposes of section 7704(d)(1)(E).
Final Regulations: Example 2
Petroleum streams chemically converted into refinery grade olefins byproducts.

• Y, a publicly traded partnership, owns a petroleum refinery. The refinery physically separates crude oil, obtaining heavy gas oil. The refinery then uses a catalytic cracking unit to chemically convert the heavy gas oil into a liquid stream suitable for gasoline blending and a gas stream containing ethane, ethylene, and other gases. The refinery also further physically separates the gas stream, resulting in refinery-grade ethylene. Y sells the ethylene in bulk to a third party.

• Y’s activities give rise to products of refining as provided in Treasury Regulation § 1.7704-4(c)(6)(i); therefore, Y is engaged in a section 7704(d)(1)(E) activity. The income Y receives from the sales of ethylene is qualifying income for purposes of section 7704(d)(1)(E).
Final Regulations: Example 3
Converting methane gas into synthetic fuels through chemical change

• Y, a publicly traded partnership, chemically converts methane into methanol and synthesis gas, and further chemically converts those products into gasoline and diesel fuel. Y receives income from sales of gasoline and diesel fuel created during the conversion processes, as well as from sales of methanol.

• With respect to the production of gasoline or diesel from methane, gasoline and diesel are products of refining as defined by Treasury Regulation § 1.7704-4(c)(6)(i). Therefore, Y is engaged in section 7704(d)(1)(E) activity and Y’s income from the sale of gasoline and diesel is qualifying income.

• The income from the sale of methanol, an intermediate product in the conversion process, is not qualifying income because methanol is not a product of processing or refining under Treasury Regulation §§ 1.7704-4(c)(5) or 1.7704-4(c)(6).
Final Regulations: Example 4
Converting methanol into gasoline and diesel

• Assume the same facts as in Example 3, except Y purchases methanol and synthesis gas and chemically converts the methanol and synthesis gas into gasoline and diesel.

• The chemical conversion of methanol and synthesis gas into gasoline and diesel is not refining as provided in Treasury Regulation § 1.7704-4(c)(6)(i) because it is not the physical or chemical conversion or the separation or blending of products listed in Treasury Regulation § 1.7704-4(c)(6)(i)(A). Accordingly, the income from the sales of gasoline and diesel is not qualifying income for section 7704(d)(1)(E).
Section 7704(d)(1)(E) Activities
Non-Qualifying Natural Gas or Crude Oil Refining Activities

- The production of plastics and similar petroleum derivatives does not give rise to qualifying income derived from processing or refining.
- Heat, steam, or electricity produced by the refining processes.
- Products that are obtained from third parties or produced onsite for use in the refinery, such as hydrogen, if excess amounts are sold.
- Any product that results from further chemical change of the product produced from the separation of the crude oil if it is not combined with other products separated from the crude oil (for example, production of petroleum coke from heavy (refinery) residuum qualifies, but any upgrading of petroleum coke (such as to anode-grade coke) does not qualify because it is further chemically changed and does not result in the same or another product on the list).
Section 7704(d)(1)(E) Activities
Refining: Ores and Minerals

• An activity is refining of ores and minerals, other than natural gas or crude oil, if it is one of the various processes to eliminate impurities or foreign matter which are necessary in achieving a high degree of purity from metallic ores and minerals which are not customarily sold in the form of the crude mineral products, as specified in Treasury Regulations § 1.7704-4(c)(6)(ii)(B).

• Refining processes include: fine pulverization, electrowinning, electrolytic deposition, roasting, thermal or electric smelting, or substantial equivalent processes or combination of processes used to separate or extract the specified metals specified in the final regulations from the ore for the primary purpose of producing a purer form of the metal.
Section 7704(d)(1)(E) Activities
Non-Qualifying Ore and Mineral Refining Activities

• Introduction of additives that remain in the metal, for example, in the manufacture of alloys of gold.

• Application of nonmining processes as defined in Treasury Regulation § 1.613-4(g) in order to produce a specified metal that is considered a waste or by-product of production from a non-specified mineral deposit.
Section 7704(d)(1)(E) Activities
Transportation

- The final regulations define transportation as the movement of minerals or natural resources and products produced from mining or production, processing, and refining, including by pipeline, marine vessel, rail, or truck.
  - storage services,
  - terminalling services, including the following: receiving products from pipelines, marine vessels, railcars, or trucks for distribution; testing and treating, as well as blending and additization, if income from such activities qualifies under the blending and additization sections of the final regulations; and separation and selling of excess RINs acquired as part of the additization services to comply with environmental regulations,
  - moving or carrying (whether by owner or operator) products via pipelines, gathering systems, and custody transfer stations,
  - operating marine vessels (including time charter), railcars, or trucks,
  - providing compression services to a pipeline,
  - liquefying or regasifying natural gas.
Section 7704(d)(1)(E) Activities
Transportation

• Transportation (except for pipeline transportation) does not include transportation of oil or gas (or oil or gas products) to a place that sells or dispenses to retail customers.

• Retail customers do not include a person who acquires oil or gas for refining or processing, or a utility.

• Transportation includes the movement of liquefied petroleum gas via trucks, rail cars, or pipeline to a place that sells to retail customers or directly to retail customers.

• Final regulations clarified that ownership or control of the assets is not required to perform a section 7704(d)(1)(E) activity. Owners or lessors of pipelines that receive payment from the use of their pipelines to transport minerals and other natural resources will be considered qualifying income.
Section 7704(d)(1)(E) Activities Marketing

- The final regulations define marketing as bulk sale of minerals or natural resources, and products from mining and production, processing, or refining of the final regulations.

- Marketing does not include retail sales (sales made in small quantities directly to end users), except for liquefied petroleum gas. For example, gas station operations are not included in marketing for purposes of section 7704(d)(1)(E).

- Marketing may also include some activities that facilitate sales including packaging, blending and additizations (provided that income from such activity would qualify under the blending and additization section of the final regulations).
Final Regulations: Example 5
Delivery of refined products

• X, a publicly traded partnership, sells diesel and lubricating oils to a government entity at wholesale prices and delivers those goods in bulk.

• X’s sale of refined products to the government entity is a section 7704(d)(1)(E) activity because it is a bulk transportation and sale and is not a retail sale.
**Section 7704(d)(1)(E) Activities**

**Additional Activities**

- The final regulations provided clarification with regards to certain additional activities that would give rise to qualifying income derived from section 7704(d)(1)(E) activities.

  - **Cost Reimbursement**: If the partnership is in the trade or business of performing a section 7704(d)(1)(E) activity, qualifying income includes income received to reimburse the partnership for its costs in performing section 7704(d)(1)(E) activities, whether imbedded in the rate the partnership charges or separately itemized. Reimbursable costs may include:
    - the cost of designing, constructing, installing, inspecting, maintaining, metering, monitoring, or relocating an asset used in the section 7704(d)(1)(E) activity; or,
    - providing office functions necessary to the operation of that section 7704(d)(1)(E) activity (such as staffing, purchasing supplies, billing, accounting, and financial accounting).
Final Regulations: Example 6
Constructing a Pipeline

• X, a publicly traded partnership, operates interstate and intrastate natural gas pipelines. Y, a corporation, is a construction firm. X pays Y to build a pipeline. X later seeks reimbursement for its cost to build the pipeline from A, a refiner who contracts with X to transport gasoline.

• X, as an operator of pipelines, is engaged in transportation pursuant to Treasury Regulation § 1.7704-4(c)(7)(i)(C). The reimbursement X receives from A for X’s cost to build the pipeline is qualifying income pursuant to Treasury Regulation § 1.7704-4(c)(10)(i) because X receives the income to reimburse X for its costs in performing X’s transportation activity and reimbursable costs may include construction costs. In contrast, Y is not in the trade or business of performing a 7704(d)(1)(E) activity, thus income Y received from X for building the pipeline is not qualifying income to Y.
Section 7704(d)(1)(E) Activities
Additional Activities

- Passive interest: qualifying income includes income and gains from a passive interest, including production royalties, minimum annual royalties, net profits interest, delay rentals, and lease-bonus payments, if the interest is in a mineral or natural resources as defined in Treasury Regulation § 1.7704-4(b). Payments received on a production payment will not be qualifying income if they are properly treated as loan payments under section 636.

- Blending: qualifying income includes income and gains from performing blending activities or services with respect to products from mining or production, processing, and refining, so long as the products being blended are components of the same mineral or natural resource. For purposes of blending, products of oil and natural gas will be considered from the same natural resource. Blending does not include combining different minerals or natural resources.
Section 7704(d)(1)(E) Activities
Additional Activities

- Additization: qualifying income includes income and gains from performing additization activities or services with respect to products from mining or production, processing, and refining, to the extent specifically permitted as follows:
  
  ◦ Addition of additives to products of natural gas and crude oil is permissible, provided such that the additives constitute less than 5% (up to 20% for ethanol or biodiesel) of the total volume of products of natural gas and crude oil and are added into the product by the terminal operator or upstream of the terminal operator.

  ◦ Ores and minerals other than natural gas and crude oil, the addition of incidental amount of materials such as paper dots to identify shipments, antifreeze to aid in shipping or compounds to allay dust as required by law or reduce losses during shipping.

  ◦ Additization of incidental amounts of material to Timber to comply with government regulations is permissible to the extent that such additization does not create a new product.
Activities Intrinsic to Section 7704(d)(1)(E) Activities

• The final regulations adopt the three requirements in the proposed regulations. A determination of whether an activity is intrinsic to a section 7704(d)(1)(E) activity must be made on an activity by activity basis.

• Three requirements for a support activity to be intrinsic:
  1. The activity is specialized to support the section 7704(d)(1)(E) activity,
  2. The activity is essential to the completion of the section 7704(d)(1)(E) activity; and,
  3. The activity requires the provision of significant services to support the section 7704(d)(1)(E) activity.
Activities Intrinsic to Section 7704(d)(1)(E)

Activities: Specialized Activity

• Requires that
  1. the personnel, affiliate, subcontractor, or independent contractor performing the activity; and,
  2. any property used in the activity or sold to the customer performing the section 7704(d)(1)(E) activity must be “specialized.”
**Activities Intrinsic to Section 7704(d)(1)(E)**

**Activities: Specialized Activity**

“Specialized”

- **Personnel:**
  - have received training unique to the mineral or natural resource industries that is of limited utility other than to perform or support a section 7704(d)(1)(E) activity.

- **Property:**
  - If an activity also involves the sale, provision, or use of property, then the property must qualify as specialized for the activity to be an intrinsic activity.
  - There are two alternative tests under which that property can qualify as specialized.
Activities Intrinsic to Section 7704(d)(1)(E)
Activities: Specialized Activity

Alternative Test 1:
Property is specialized if it is used only in connection with section 7704(d)(1)(E) activities and has limited use outside of those activities. That property must also not be easily converted to a use other than performing or supporting a section 7704(d)(1)(E) activity. Exceptions are provided for non-specialized property typically used incidentally in operating a business.
Activities Intrinsic to Section 7704(d)(1)(E) Activities: Specialized Activity

Alternative Test 2:

Property that can be used for purposes other than to perform or support a section 7704(d)(1)(E) activity will qualify as specialized to the extent that the property is used as an injectant to perform a section 7704(d)(1)(E) activity:

- The partnership provides the injectants exclusively to those engaged in section 7704(d)(1)(E) activities;
- The partnership is also in the trade or business of collecting, cleaning recycling, otherwise disposal of injectants after use in accordance with federal, state, or local regulations concerning waste products from mining or production activities;
- The partnership operates its injectant delivery and disposal services within the same geographic area. Injectants under this definition include, for example, water and lubricants used in connection with section 7704(d)(1)(E) activities.
Final Regulations: Example 7

Delivery of water

- X, a publicly traded partnership, owns interstate and intrastate natural gas pipelines. X built a water delivery pipeline along the existing right of way for its natural gas pipeline to deliver water to A for use in A’s fracturing activity. A uses the delivered water in fracturing to develop A’s natural gas reserve in a cost-efficient manner. X earns income for transporting natural gas in the pipelines and for delivery of water.

- X’s income from transporting natural gas in its interstate and intrastate pipelines is qualifying income for purposes of section 7704(c) because transportation of natural gas is a section 7704(d)(1)(E) activity.
Final Regulations: Example 7
Delivery of water

- The income X obtains from its water delivery services is not a section 7704(d)(1)(E) activity. However, because X’s water delivery supports A’s development of natural gas, a section 7704(d)(1)(E) activity, X’s income from water delivery services may be qualifying income for purposes of section 7704(c) if the water delivery service is an intrinsic activity.
Final Regulations: Example 7
Delivery of water

- Under Treasury Regulation § 1.7704-4(d)(2)(ii)(B), the provision of water for use as an injectant in a section 7704(d)(1)(E) activity is specialized to that activity only if the partnership

  1. provides the water exclusively to those engaged in section 7704(d)(1)(E) activities,

  2. is also in the trade or business of cleaning, recycling, or otherwise disposing of water after use in accordance with Federal, state, or local regulations concerning waste products from mining or production activities, and

  3. operates these disposal services within the same geographic area as that in which it delivers water. Because X does not perform such disposal services, X’s water delivery activities are not specialized to support the section 7704(d)(1)(E) activity. Thus, X’s water delivery is not an intrinsic activity. Accordingly, X’s income from the delivery of water is not qualifying income for purposes of section 7704(c).
Final Regulations: Example 8
Delivery of water and recovery and recycling of flowback

• Same facts as in Example 7, except that X also collects and treats flowback at the drilling site in accordance with state regulations as part of its water delivery services and transports the treated flowback away from the site. In connection with these services, X provides personnel to perform these services on an ongoing or frequent basis that is consistent with best industry practices. X has provided these personnel with specialized training regarding the recovery and recycling of flowback produced during the development of natural gas, and this training is of limited utility other than to perform or support the development of natural gas.
Final Regulations: Example 8
Delivery of water and recovery and recycling of flowback

• The income X obtains from its water delivery services is not a section 7704(d)(1)(E) activity. However, because X’s water delivery supports A’s development of natural gas, a section 7704(d)(1)(E) activity, X’s income from water delivery services may be qualifying income for purposes of section 7704(c) if the water delivery service is an intrinsic activity.
Final Regulations: Example 8

Delivery of water and recovery and recycling of flowback

• X’s provision of personnel is specialized because those personnel received training regarding the recovery and recycling of flowback produced during the development of natural gas, and this training is of limited utility other than to perform or support the development of natural gas. The provision of water is also specialized because water is an injectant used to perform a section 7704(d)(1)(E) activity, and X also collects and treats flowback in accordance with state regulations as part of its water delivery services. Therefore, X meets the specialization requirement. The delivery of water is essential to support A’s development activity because the water is needed for use in fracturing to develop A’s natural gas reserve in a cost-efficient manner.
**Final Regulations: Example 8**

**Delivery of water and recovery and recycling of flowback**

- Finally, the water delivery and recovery and recycling activities require significant services to support the development activity because X’s personnel provide services necessary for the partnership to perform the support activity at the development site on an ongoing or frequent basis that is consistent with best industry practices. Because X’s delivery of water and X’s collection, transport, and treatment of flowback is a specialized activity, is essential to the completion of a section 7704(d)(1)(E) activity, and requires significant services, the delivery of water and the transport and treatment of flowback is an intrinsic activity. X’s income from the delivery of water and the collection, treatment, and transport of flowback is qualifying income for purposes of section 7704(c).
Activities Intrinsic to Section 7704(d)(1)(E)

Activities: Essential

• An activity meets the second requirement of the intrinsic test if the activity is essential to a section 7704(d)(1)(E) activity.

• An activity is essential if it is necessary to:
  1. Physically complete the section 7704(d)(1)(E) activity (including in a cost effective manner in order to make the activity economically viable), or
  2. Comply with federal, state or local law regulating the section 7704(d)(1)(E) activity.

• Legal, financial, consulting, accounting, insurance and other similar services do not qualify as essential to a section 7704(d)(1)(E) activity.
Activities Intrinsic to Section 7704(d)(1)(E)
Activities: Essential

- Examples:
  - Water delivery and disposal services are essential when provided for use in fracturing because the water must be used to complete the drilling operations (a development activity under section 7704(d)(1)(E)) and because the water disposal services must be performed to comply with federal, state, or local law regulating drilling and fracturing.
  - Legal, financial, consulting, accounting, insurance, and other similar services are not essential to a section 7704(d)(1)(E) activity because the connection to completion of the section 7704(d)(1)(E) activity is too attenuated.
Activities Intrinsic to Section 7704(d)(1)(E)
Activities: Significant Services

• An activity meets the third requirement of the intrinsic test if the activity includes the provision of significant services. A partnership provides significant services if those services must be conducted on an ongoing or frequent basis by the partnership’s personnel at the site or sites of the section 7704(d)(1)(E) activities.

• Personnel include employees of the partnership, an affiliate, subcontractor, or independent contractor performing work on behalf of the partnership.
Activities Intrinsic to Section 7704(d)(1)(E)
Activities: Significant Services

- The final regulations provide that the services may be conducted offsite if the services are performed on an ongoing or frequent basis and offered for those engaged in one or more section 7704(d)(1)(E) activities.
  - If the services are monitoring, those services must be offered exclusively to those engaged in one or more section 7704(d)(1)(E) activities.
- The design, construction, manufacturing, repair, maintenance, lease, rent, or temporary provision of assets is not taken into account when determining whether a partnership has provided significant services.
**Effective Date**

- The regulations are to apply to income earned by a partnership in a taxable year beginning on or after January 19, 2017.
- The final regulations also provide for a Transition Period, which ends on the last day of the partnership’s taxable year that includes the date that is ten years after the date that includes January 19, 2027.
Transition Rules

• The proposed regulations provide that a partnership may treat income from an activity as qualifying income during the Transition Period if:
  - The partnership received a private letter ruling from the IRS holding that income from the activity is qualifying income.
  - Prior to May 6, 2015 the partnership was publicly traded, engaged in the activity and treated the activity as giving rise to qualifying income under the statute as reasonably interpreted.
  - Prior to May 6, 2015 the partnership was publicly traded, entered into a binding agreement for construction of assets to be used in such activity that would give rise to qualifying income under the statute as reasonably interpreted.
  - The partnership is publicly traded and engages in the activity after May 6, 2015 but before January 19, 2017 and the income from the activity is qualifying income under the proposed regulations.
**Transition Period – Technical Termination**

- In the event of a technical termination, under section 708(b)(1)(B), of a publicly traded partnership that satisfied the transition period requirements, the resulting publicly traded partnership will be treated as the publicly traded partnership that satisfies the transition period requirements.
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