



**MIDSTREAM'S GREATEST RESOURCE**

August 4, 2015

**VIA ELECTRONIC FILING**

Internal Revenue Service  
CC:PA:LPD:PR (REG-132634-14)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station,  
Washington, DC 20044

**Re: Docket No. REG-132634-14: Proposed Rule on Qualifying Income From Activities of Publically Traded Partnerships With Respect to Minerals or Natural Resources; Federal Register Vol. 80, No. 87 (May 6, 2015); RIN 1545-BM43**

Dear Sir/Madam:

GPA has served the U.S. energy industry since 1921 as an incorporated non-profit trade association. GPA is composed of 122 corporate members of all sizes that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as “midstream activities.” Such processing includes the removal of impurities from the raw gas stream produced at the wellhead, as well as the extraction for sale of natural gas liquid products (NGLs) such as ethane, propane, butane and natural gasoline. GPA members account for more than 90 percent of the NGLs produced in the United States from natural gas processing. Our members also operate hundreds of thousands of miles of domestic gas gathering lines and are involved with storing, transporting, and marketing natural gas and NGLs.

GPA is submitting these comments on the proposed regulations promulgated on May 5, 2014 under section 7704(d)(1)(E) relating to qualifying income from the exploration, mining, or production, processing, refining, transportation, and marketing of minerals or natural resources. GPA believes the proposed regulations set forth contain definitions of processing and refining that are without statutory support and that could potentially impact GPA’s member’s operations. GPA respectfully requests the Internal Revenue Service (IRS) to consider the following points.

## **I. The Proposed Rule is Inconsistent with the Legislative History and Existing Treasury Regulations**

The proposed rule states that it is consistent with the legislative history and the existing Treasury regulations that deal with depletion. However, the way that the proposed rule is crafted proves the opposite. The proposed rule creates tests that force “processing” and “refining” into narrow constructions that depart from the literal meaning of the words of the statute, the legislative history, and existing Treasury regulations.

There are two fundamental requirements to generate qualifying income under section 7704(d)(1)(E): (i) the income generating activity must relate to a “mineral or natural resource” and (ii) the income must be derived from one or more listed activities, including “processing” and “refining.” If these two requirements are met, then income from the activity is qualifying income for purposes of section 7704.

Natural Gas Liquids (NGLs) are by their very nature natural resources. NGLs are comprised of ethane, propane, isobutane, methane, and butane- all of which are naturally occurring, often found in the raw natural gas stream when first produced from the ground. NGLs are hydrocarbon components of oil and gas, falling within the statutory definition of “natural resources” in section 7704(d)(1)(E). NGL’s should be treated as natural resources for purposes of determining qualifying income.

The proposed rule directly impacts, and as a result, prohibits GPA members’ from treating revenue associated from the processing (or removal) of NGLs from the raw gas stream as qualifying income-this is contrary to the historical treatment of such activity and contrary to the very intent of Congress when it adopted Section 7704 to assist operators with capital intensive, low or controlled rate of return investments that are critical to supporting the livelihood and needs of Americans, not to mention the manufacturing industry, each day.

## **II. Processing with Respect to Crude Oil Should Also Be Processing with Respect to NGLs**

NGLs are found in both crude oil and natural gas and are thus a part of “oil and gas.” Like oil and natural gas, they are depletable natural resources that diminish with extraction, and are therefore Qualifying Natural Resources.

As Qualifying Natural Resources, NGLs may be either “processed” or “refined” to produce qualifying income. Indeed, NGLs are processed and refined in both crude oil refineries and in steam crackers and other NGL processing facilities

such as fractionators. There is no legislative history to suggest that the natural resource being treated or the location of the processing or refining should affect whether the activity is qualifying income.

GPA believes that the proposed definitions of processing and refining are overly restrictive and do not have statutory support. GPA requests that the proposed definitions be amended so that there is no disparate treatment of crude oil versus NGLs. In other words, regardless of the commodity being processed – oil or natural gas – the activity and resulting revenue stream should, and will be treated equally and will be considered qualifying income for the purposes of determining the entity's treatment under Section 7704.

### **III. Proposed Clarification to Eliminate Disparate Treatment of NGLs and Crude Oil**

To achieve GPA's suggested clarification with regard to processing and refining NGLs, GPA suggests that the Service eliminate the disparate treatment of NGLs and crude oil. In addition, the Service should amend the language of Prop. Treas. Reg. § 1.7704-4(c)(5)(ii)(B) to read as follows;

"Separate natural gas into its constituents which are normally recovered in a gaseous phase (methane) and those which are normally recovered in a liquid phase (ethane, propane, butane, natural gasoline, and gas condensate), convert one such constituent of natural gas into another, or remove impurities from the gas or liquids or otherwise enhance motor fuel blend stock."

### **IV. Finally, GPA Recommends that Existing Private Letter Rulings Continue to be Abided and Respected by the IRS**

Taxpayers have relied on private letter rulings to determine the scope of qualifying income for more than 27 years since the enactment of the statute. Taxpayers have conservatively, and in good faith, relied on rulings provided to them by the IRS. This practice should not be disturbed by the proposed rules.

Thank you for your time and consideration of our request. Please contact me at (918) 493-3872 or [mhite@gpaglobal.org](mailto:mhite@gpaglobal.org) if you have any questions.

Sincerely,

Matthew Hite  
Vice President of Government Affairs  
Gas Processors Association