§ 7704. Certain publicly traded partnerships treated as corporations

(a) General rule

For purposes of this title, except as provided in subsection (c), a publicly traded partnership shall be treated as a corporation.

(b) Publicly traded partnership

For purposes of this section, the term “publicly traded partnership” means any partnership (or any predecessor) was in existence during any period before the 1st taxable year in which such partnership (or a predecessor) was a publicly traded partnership.

(2) Gross income requirements

A partnership meets the gross income requirements of this paragraph for any taxable year if 90 percent or more of the gross income of such partnership for such taxable year consists of qualifying income.

(3) Exception not to apply to certain partnerships which could qualify as regulated investment companies

This subsection shall not apply to any partnership which would be described in section 851(a) if such partnership were a domestic corporation. To the extent provided in regulations, the preceding sentence shall not apply to any partnership a principal activity of which is the buying and selling of commodities (not described in section 1221(a)(1)), or options, futures, or forwards with respect to commodities.

(d) Qualifying income

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term “qualifying income” means—

(A) interest,
(B) dividends,
(C) real property rents,
(D) gain from the sale or other disposition of real property (including property described in section 1221(a)(1)),

(E) income and gains derived from the exploration, development, mining or production, processing, refining, transportation (including pipelines transporting gas, oil, or products thereof), or the marketing of any mineral or natural resource (including fertilizer, geothermal energy, and timber), industrial source carbon dioxide, or the transportation or storage of any fuel described in subsection (b), (c), (d), or (e) of section 6426, or any alcohol fuel defined in section 6426(b)(4)(A) or any biodiesel fuel as defined in section 40A(d)(1),

(F) any gain from the sale or disposition of a capital asset (or property described in section 1231(b)) held for the production of income described in any of the foregoing subparagraphs of this paragraph, and

(G) in the case of a partnership described in the second sentence of subsection (c)(3), income and gains from commodities (not described in section 1221(a)(1)) or futures, forwards, and options with respect to commodities.

For purposes of subparagraph (E), the term “mineral or natural resource” means any product of a character with respect to which a deduction for depletion is allowable under section 611; except that such term shall not include any product described in subparagraph (A) or (B) of section 613(b)(7).

(2) Certain interest not qualified

Interest shall not be treated as qualifying income if—

(A) such interest is derived in the conduct of a financial or insurance business, or

(B) such interest would be excluded from the term “interest” under section 856(f).

(3) Real property rent

The term “real property rent” means amounts which would qualify as rent from real property under section 856(d) if—

(A) such section were applied without regard to paragraph (2) thereof (relating to independent contractor requirements), and

(B) stock owned, directly or indirectly, by or for a partner would not be considered as owned under section 318(a)(3)(A) by the partnership unless 5 percent or more (by value) of the interests in such partnership are owned, directly or indirectly, by or for such partner.

(4) Certain income qualifying under regulated investment company or real estate trust provisions

The term “qualifying income” also includes any income which would qualify under section 851(b)(2)(A) or 856(c)(2).

(5) Special rule for determining gross income from certain real property sales

In the case of the sale or other disposition of real property described in section 1221(a)(1), gross income shall not be reduced by inventory costs.

(e) Inadvertent terminations

If—

(1) a partnership fails to meet the gross income requirements of subsection (c)(2),

Effective Date

Section applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transi-
(2) the Secretary determines that such failure was inadvertent,
(3) no later than a reasonable time after the discovery of such failure, steps are taken so that such partnership once more meets such gross income requirements, and
(4) such partnership agrees to make such adjustments (including adjustments with respect to the partners) or to pay such amounts as may be required by the Secretary with respect to such period,
then, notwithstanding such failure, such entity shall be treated as continuing to meet such gross income requirements for such period.

(f) Effect of becoming corporation
As of the 1st day that a partnership is treated as a corporation under this section, for purposes of this title, such partnership shall be treated as—

(1) transferring all of its assets (subject to its liabilities) to a newly formed corporation in exchange for the stock of the corporation, and
(2) distributing such stock to its partners in liquidation of their interests in the partnership.

(g) Exception for electing 1987 partnerships

(1) In general
Subsection (a) shall not apply to an electing 1987 partnership.

(2) Electing 1987 partnership
For purposes of this subsection, the term “electing 1987 partnership” means any publicly traded partnership if—

(A) such partnership is an existing partnership (as defined in section 10211(c)(2) of the Revenue Reconciliation Act of 1987),
(B) subsection (a) has not applied (and without regard to subsection (c)(1)) would not have applied) to such partnership for all prior taxable years beginning after December 31, 1987, and before January 1, 1996, and
(C) such partnership elects the application of this subsection, and consents to the application of the tax imposed by paragraph (3), for its first taxable year beginning after December 31, 1997.

A partnership which, but for this sentence, would be treated as an electing 1987 partnership shall cease to be so treated (and the election under subparagraph (C) shall cease to be in effect) as of the 1st day after December 31, 1997, on which there has been an addition of a substantial new line of business with respect to such partnership.

(3) Additional tax on electing partnerships

(A) Imposition of tax
There is hereby imposed for each taxable year on the income of each electing 1987 partnership a tax equal to 3.5 percent of such partnership’s gross income for the taxable year from the active conduct of trades and businesses by the partnership.

(B) Adjustments in the case of tiered partnerships
For purposes of this paragraph, in the case of a partnership which is a partner in another partnership, the gross income referred to in subparagraph (A) shall include the partnership’s distributive share of the gross income of such other partnership from the active conduct of trades and businesses of such other partnership. A similar rule shall apply in the case of lower-tiered partnerships.

(C) Treatment of tax
For purposes of this title, the tax imposed by this paragraph shall be treated as imposed by chapter 1 other than for purposes of determining the amount of any credit allowable under chapter 1 and shall be paid by the partnership. Section 6655 shall be applied to such partnership with respect to such tax in the same manner as if the partnership were a corporation, such tax were imposed by section 11, and references in such section to taxable income were references to the gross income referred to in subparagraph (A).

(4) Election
An election and consent under this subsection shall apply to the taxable year for which made and all subsequent taxable years unless revoked by the partnership. Such revocation may be made without the consent of the Secretary, but, once so revoked, may not be reinstated.


References in Text
Section 10211(c)(2) of the Revenue Reconciliation Act of 1987, referred to in subsec. (g)(2)(A), probably means section 10211(c)(2) of the Revenue Act of 1987, title X of Pub. L. 100–203, which is set out as a note below.

Amendments

Pub. L. 110–343, § 116(a), inserted “or industrial source carbon dioxide” before comma at end.


1999—Subsecs. (c)(3), (d)(1)(D), (G), (5), Pub. L. 106–170 substituted “section 1221(a)(1)” for “section 1221(1)”.

1998—Subsec. (g)(3)(C). Pub. L. 105–206 inserted at end “and shall be paid by the partnership. Section 6655 shall be applied to such partnership with respect to such tax in the same manner as if the partnership were a corporation, such tax were imposed by section 11, and references in such section to taxable income were references to the gross income referred to in subparagraph (A)”.

a partnership shall not be treated as being in existence during any period before the 1st taxable year in which such partnership (or a predecessor) was a publicly traded partnership.

Subsec. (d)(1). Pub. L. 100–647, § 2004(f)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ‘‘The term ‘real property rent’ means amounts which would qualify as rent from real property under section 856(d) if such section were applied without regard to paragraph (2)(C) thereof (relating to independent contractor requirements).’’

Subsec. (e)(4). Pub. L. 100–647, § 2004(f)(1), inserted ‘‘or to pay such amounts’’ before ‘‘as may be required’’.

Effective Date of 2008 Amendment

Effective Date of 2011 Amendment

Effective Date of 2012 Amendment
Pub. L. 112–96, div. A, title II, § 208(b), Mar. 6, 2012, 126 Stat. 78, provided that: ‘‘The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Mar. 6, 2012], in taxable years beginning after Dec. 17, 2011.’’

Effective Date of 2013 Amendment

Effective Date of 2015 Amendment

Effective Date of 2017 Amendment

Effective Date of 2018 Amendment

Effective Date of 2019 Amendment

Effective Date of 2020 Amendment

Effective Date of 2021 Amendment

Effective Date of 2022 Amendment