



April 15, 2015

Hon. JOHN THUNE,
U.S. Senator, South Dakota

Hon. BENJAMIN L. CARDIN
U.S. Senator, Maryland

Tax Reform Working Group on Business Income Tax,
U.S. Senate Committee on Finance,
The Capitol,
Washington, D.C.

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Re: Comments on Certain Aspects of Business Tax Reform Applicable to Publicly Traded Partnerships Under Internal Revenue Code Section 7704

Dear Senators John Thune and Benjamin L. Cardin:

On behalf of our client, AllianceBernstein Holding L.P. (“AllianceBernstein”), we are pleased to submit this statement in response to the request for comments on the United States Income Tax Code by the Business Income Tax Bipartisan Working Group established by the Senate Finance Committee Chairman and the Ranking Member of the Senate Finance Committee. AllianceBernstein welcomes the opportunity to address certain significant tax issues relevant to its operations, and thanks the Chairman and Ranking Member for the development of the working group to promote tax reform, and providing this forum.

AllianceBernstein is a global investment management and research firm that provides a broad range of research and investment management services to its clients. AllianceBernstein has been in the investment research and management business for more than 40 years. In 1988, AllianceBernstein “went public” as a master limited partnership, and its limited partnership interests have been publicly traded on the New York Stock Exchange since that time. AllianceBernstein is a publicly traded partnership that qualifies for an exception to the general treatment as a corporation as an “electing 1987 partnership” under Section 7704(g) of the Code.¹

This statement addresses the treatment of publicly traded partnerships, specifically, the “grandfathering” of electing 1987 partnerships as excepted from taxation as corporations under Section 7704(g) of the Internal Revenue Code of 1986, as amended (the “Code”). For the reasons set forth below, AllianceBernstein and we believe that the policy concerns reflected in various legislative proposals to limit the availability of exceptions from corporate taxation for most publicly traded partnerships do not apply to electing 1987 partnership structures like

¹ AllianceBernstein’s business is operated by AllianceBernstein L.P., a partnership between AllianceBernstein Holding L.P. and certain affiliates of AXA Equitable Life Insurance Company. AllianceBernstein L.P. is not publicly traded.

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AllianceBernstein. Accordingly, any legislative proposal modifying the exceptions from corporate taxation for publicly traded partnerships generally should not apply to electing 1987 partnerships.

I. Publicly Traded Partnerships

Section 7704(a) provides that a publicly traded partnership will be treated as a corporation, unless such publicly traded partnership qualifies for an exception from such treatment. (Put differently, a publicly traded partnership which qualifies for an exception generally continues to be taxed as a partnership and not as a corporation for U.S. federal income tax purposes.) For this purpose, a 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 substantial equivalent thereof).”² The legislative history notes that these general rules treating publicly traded partnerships as corporations were enacted in 1987 to address concern about the potential long-term erosion of the corporate tax base.³

Under Section 7704(c), an exception from corporate taxation is available for certain publicly traded partnerships which generally derive their gross income from “passive” sources. To meet this exception, the statute requires that at least 90% of a partnership’s gross income consist of qualifying income.⁴ Qualifying income, for these purposes, includes interest,⁵ dividends, rents from real property, income and gains related to exploiting certain natural resources,⁶ or gains from the disposition of a capital asset held for the production of income that is otherwise qualifying income for these purposes.⁷ This exception is not available to certain publicly traded partnerships that otherwise could qualify as regulated investment companies.⁸

² Section 7704(b). All section references herein, unless otherwise noted, are to the Code.

³ See H. Rep. No. 100-391, 100th Cong., 1st Sess. 1065, 1066 (stating that “[t]o the extent that activities would otherwise be conducted in corporate form and earnings would be subject to two levels of tax (at the corporate and shareholder levels), the growth of publicly traded partnerships engaged in such activities tends to jeopardize the corporate tax base. . . . These changes [in Section 7704] reflect an intent to preserve the corporate level tax”).

⁴ Section 7704(c)(2).

⁵ Certain interest is not considered qualified income if (i) “such interest is derived in the conduct of a financial or insurance business,” or (ii) “such interest would be excluded from the term under Section 856(f).”

⁶ Section 7704(d)(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) or 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)”).

⁷ Section 7704(d)(1).

⁸ Section 7704(c)(3). This rule generally prevents an entity from rendering the regulated investment company provisions of the Code elective merely by organizing in partnership form.

Section 7704(g) provides an additional exception from corporate treatment for electing 1987 partnerships.⁹ An electing 1987 partnership is any publicly traded partnership (1) that was an “existing partnership” on December 17, 1987,¹⁰ (2) to which Section 7704(a) has not applied for all prior tax years beginning after December 31, 1987, and (3) that elects the application of Section 7704(g) and consents to the application of a tax on gross income imposed on the first tax year beginning after December 31, 1997.¹¹ The tax on gross income is equal to 3.5 percent of such partnership’s gross income for the tax year derived from the active conduct of trades and businesses.¹²

The publicly traded partnership rules were enacted in 1987, and would not apply to certain existing publicly traded partnerships until taxable years beginning after December 31, 1997.¹³ When Congress reconsidered the issue in 1997, it decided that it was appropriate to permit these “grandfathered” electing 1987 partnerships to continue as partnerships, provided that such partnerships elected to be subject to a tax on their active business income, which was intended to approximate the corporate tax they would pay if treated as corporations.¹⁴ Accordingly, the Taxpayer Relief Act of 1997 extended the grandfathering of certain publicly traded partnerships that existed in 1987, but required that those partnerships nevertheless pay a tax on their active gross income.¹⁵

II. Proposed Legislation

Over the last few years, there have been a few proposals that would modify the publicly traded partnership rules. However, none of these proposals have proposed eliminating the exception under Section 7704(g) for electing 1987 partnerships.

A. *President’s Fiscal Year 2016 Budget*

The President’s Fiscal Year 2016 Budget eliminates certain fossil fuel tax preferences, including repealing the exemption from the corporate income tax for publicly traded partnerships

⁹ Section 7704(g).

¹⁰ See Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), sec. 10211(c)(2)(A) (a partnership is an “existing partnership” if (i) such partnership was a publicly traded partnership on December 17, 1987, (ii) a registration statement indicating that such partnership was to be a publicly traded partnership was filed with the Securities and Exchange Commission with respect to such partnership on or before such date, or (iii) with respect to such partnership, an application was filed with a State regulatory commission on or before such date seeking permission to restructure a portion of a corporation as a publicly traded partnership).

¹¹ Section 7704(g)(2).

¹² Section 7704(g)(3).

¹³ Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), sec. 10211(c).

¹⁴ Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in 1997, 151 (Dec. 17, 1997).

¹⁵ P.L. 105-34, sec. 964.

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with qualifying income and gains from activities relating to fossil fuels, effective after December 31, 2020.¹⁶

The President's Fiscal Year 2016 Budget does not modify Section 7704(g).

B. Representative Camp's Proposal (2014)

Representative David Camp, former Chairman of the House Committee on Ways and Means, introduced a proposal for comprehensive tax reform in February 2014.¹⁷ The proposed legislation would generally eliminate the exceptions from corporate treatment for partnerships with passive-type income. However, publicly traded partnerships that derive 90 percent of their gross income from certain mining and natural resources income would still qualify for an exception from corporate treatment. This provision would be effective for years beginning after 2016.

Representative Camp's proposal would not modify Section 7704(g).

C. Senator Baucus and Senator Grassley's Proposal (2007)

In June 2007, then Senate Finance Committee Chairman Max Baucus and then Ranking Member Charles Grassley introduced legislation to prevent financial services businesses from avoiding corporate income tax through the use of publicly traded partnerships.¹⁸ The proposed legislation generally provided that the qualifying income exception from corporate treatment for a publicly traded partnership would not apply in the case of a partnership that directly or indirectly derived income from investment adviser services or related asset management services. Such a partnership would instead be treated as a corporation for United States federal income tax purposes and would be subject to the corporate income tax.

The purpose of Senator Baucus and Senator Grassley's proposed legislation was to ensure that Congress's original intent in enacting Section 7704, preserving the corporate tax base, is carried out and to ensure fairness for similarly situated taxpayers.¹⁹ The proposed legislation was directed specifically at publicly traded partnerships that are excepted from corporate treatment because they satisfy the qualifying income exception, but are effectively engaged in an active trade or business.²⁰

¹⁶ Department of the Treasury, General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals (February 2015).

¹⁷ Tax Reform Act of 2014, statutory draft version, Camp_041.XML.

¹⁸ S. 1624, 105th Cong. (2007).

¹⁹ Senate Finance Committee Chairman Max Baucus, Statement of Introduction on Publicly Traded Partnership Bill (June 13, 2007).

²⁰ Letter from Max Baucus, Senate Finance Committee Chairman, and Charles Grassley, Senate Finance Committee Ranking Member, to Henry M. Paulson, Jr., Secretary of the Department of Treasury (June 14, 2007) (stating that

Senator Baucus and Senator Grassley's proposal would not modify Section 7704(g).

III. Application of Proposed Legislation to Electing 1987 Partnerships

The exception for electing 1987 partnerships under Section 7704(g) should not be eliminated or otherwise modified. Electing 1987 partnerships such as AllianceBernstein are different from passive-income partnerships excepted under Section 7704(c), and the concern that the publicly traded partnership rules may be used to evade corporate tax is of less relevance. Similar to corporations, AllianceBernstein and their unit holders are subject to two levels of tax. As an electing 1987 partnership, AllianceBernstein pays the 3.5% tax on its gross income from its active business. In addition, almost all of AllianceBernstein's income is subject to tax at the unit holder level at ordinary income rates, since the overwhelming majority (*e.g.* over the last three taxable years, well in excess of 95% each year) of AllianceBernstein's income is derived from fees from the conduct of a trade or business. As such, all of AllianceBernstein's unit holders, including tax-exempt organizations as well as non-resident aliens and foreign corporations, are subject to full United States income tax at ordinary rates on their allocable share of such income.²¹ This is in contrast to dividend and capital gain income, which is subject to more favorable tax rates. AllianceBernstein is also widely held, with most of AllianceBernstein's unit holders purchasing units for cash, all of which has been presumably subject to tax at the unit holder level (to the extent the unit holder is generally subject to tax). There are no large individual unit holders, including management, who are avoiding or failing to pay tax on earnings attributable to services as a result of AllianceBernstein's treatment as an electing 1987 partnership.

As noted above, none of the recent proposals relating to publicly traded partnerships have proposed modifying or eliminating Section 7704(g). When enacting Section 7704(g), Congress made the determination that a very limited segment of long-standing publicly traded partnerships could continue to be treated as partnerships and not as corporations, provided that these publicly traded partnerships paid a tax on gross income, which was meant to approximate the corporate tax they would pay. The rationale for exception from treatment as a corporation under Section 7704(g) is entirely different from the rationale underlying the qualifying income exemption under Section 7704(c), which was intended to except certain partnerships that had at least 90% of gross income as qualifying or passive income. Further, the concerns regarding abuses of Section 7704(c) are not present for Section 7704(g). Electing 1987 partnerships are limited in number and therefore the concerns about base erosion of the corporate tax are fewer. Finally, electing

“[w]e believe that the publicly traded partnership rules [regarding the 90 percent qualified income test] are being circumvented because the majority of the income is from the active provision of services to the underlying funds and limited partner investors in those funds”).

²¹ For tax-exempt investors, any income received from us likely is considered unrelated business taxable income, which generally is subject to tax under Section 511 of the Code. For non-resident aliens and foreign corporations, any income or gains allocated by us generally would be considered effectively connected income from sources within the United States and thus included in gross income subject to U.S. federal income tax under Sections 871(b) and 882(a) of the Code, respectively.

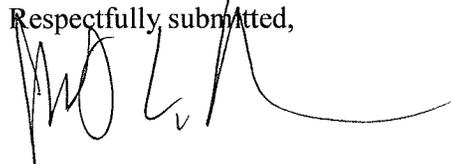
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1987 partnerships already pay a tax that approximates the corporate income tax rate on their active income. Accordingly, the rules for electing 1987 partnerships should not be changed.

In conclusion, AllianceBernstein believes that the goal of tax reform should be an efficient, simple tax system that creates growth, jobs, savings and investment. Preservation of the partnership tax status and the gross income tax for entities such as AllianceBernstein is consistent with these goals. Those grandfathered partnerships are subject to a two-level tax, including a surrogate for the corporate income tax, and no purpose would be served by disrupting this status. We and AllianceBernstein personnel would be very pleased to meet with the working groups to discuss these matters in detail.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Stuart L. Rosow', with a long horizontal flourish extending to the right.

Stuart L. Rosow