802.2(c)(1)

Verne, B. Michael

From: [redacted]
Sent: Thursday, May 03, 2012 1:11 PM
To: Verne, B. Michael
Subject: 802.2(c)(1)
Attachments: ISO 2008 Timber.pdf

Dear Mike:

"A" is an LLC which owns a parcel of timberlands. A is wholly owned by "B," an LLC controlled by a REIT. B owns all of the voting securities of "C," a corporation treated as a taxable REIT subsidiary.

A's parcel is subject to an IRC 631(b) cutting contract between A and C. Under the contract, and in compliance with 631(b), C pays A for the right to enter onto A's parcel, harvest and acquire the logs that C has harvested. C then sells the logs from A's parcel to third parties.

We need to determine whether A's parcel is "unproductive" within the meaning 802.2(c)(1), and specifically whether the total revenues generated by the parcel over the preceding 36 months exceed $5 million. In so doing, we understand we may exclude C's payments to A as "intracompany sales." (See ISO 0804002, attached.)

For purposes of 802.2(c)(1), should we <u>include</u> or <u>exclude</u> the revenues obtained by C from its sales of logs (harvested from A's parcel) to third parties?

Thank you,

[redacted]

I think the revenues that C gets from selling the logs to third parties should be excluded. The only revenues generated by A/timberlands is the payments by C under the cutting contract. The subsequent sale of the logs by C is attributed to C, not the timberlands and A.

5/3/12