Sheinberg, Samuel I.

From: [redacted]
Sent: Thursday, July 11, 2019 11:47 AM
To: Walsh, Kathryn E.; Carson, Timothy; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Olson, Eric
Subject: FW: Question re Geographic Allocation of Good Will

From: Berg, Karen E.
Sent: Thursday, July 11, 2019 11:46:49 AM (UTC-05:00) Eastern Time (US & Canada)
To: [redacted]
Cc: [redacted]
Subject: RE: Question re Geographic Allocation of Good Will

[redacted]

Goodwill should be allocated according to sales (in/into versus outside the US). So if 80% of Y's sales were US sales, 80% of its goodwill is a US asset.

Karen

From: [redacted]
Sent: Wednesday, July 10, 2019 10:55:11 AM (UTC-05:00) Eastern Time (US & Canada)
To: [redacted]
Subject: Question re Geographic Allocation of Good Will

Hi everyone,

I have a question about the location of good will: Specifically X is acquiring certain voting shares of Y, a foreign entity that develops, supports, and licenses cloud-based software. X is assessing whether the acquisition would be exempt under Section 802.4. Y did not generate at least $90 million of sales in or into the US in Y's most recent year. Thus the issue is determining the fair market value of Y's U.S. assets.

Y is not incorporated in the US and does not have its principal offices in the US. All of Y's sales force is located outside the US. We believe (and are confirming) that the only assets Y has in the US are bank accounts and accounts receivable. Eighty percent of Y's total revenues, however, are attributable to customers located in the U.S. The contracting party with these US customers is Y.

When identifying Y's U.S. assets for purposes of determining their fair market value, may we take the position that under these facts Y's good will is located outside the US? Or does the fact that most of Y's customers are located in the US mean that most of Y's good will is necessarily located in the US?

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[redacted].

[redacted]

[redacted]