

Verne, B. Michael

802.2(a)

From: [Redacted]  
Sent: Tuesday, March 06, 2007 6:07 PM  
To: Verne, B. Michael  
Cc: [Redacted]  
Subject: Rule 802.2(a)

Hi Mike - hope you had a good weekend. You must me going totally nuts without Nancy there to share the work load. Are you bringing anyone else into the office? If so I hope you can get someone really good.

Under 802.2(a), an acquisition of a new facility is exempt as long as it has not produced income. In the instance that I am advising on, the new facility is a power plant. The acquired person owns land and permits, it will build a power plant on the land. The acquiring person has an option to buy the power plant when it is completed, as a turnkey facility. Up to this point it seems to clearly be covered by 802.2(a).

However, as the power plant construction nears completion, testing phases will be undertaken. As the power plant is being tested, prior to consummation of the delivery / sale to the buyer, it will generate electricity which as part of the testing process will be delivered to the local power grid, and as such the testing will also generate revenue for the developer of the plant. Because the testing needs will be significant and occur over a period of time, this not necessarily a one-time thing. Will this result in the exemption being lost?

Thanks for your help and I hope to see you sometime soon.

Regards,



\*\*\*\*\*

To comply with IRS regulations, we advise you that any discussion of federal tax issues in this email was not intended or written to be used, and cannot be used by you, (i) to avoid any penalties imposed under the Internal Revenue Code or (ii) to promote, market or recommend to another party any transaction or matter addressed herein.

For more information please go to [Redacted]

\*\*\*\*\*

802.2(a) is still available as long as the only revenues attributable to the plant come from testing and run-in.

*Bruce*  
3/6/07