

802.2(c)

Verne, B. Michael

From: [REDACTED]  
Sent: Thursday, May 24, 2007 11:54 AM  
To: Verne, B. Michael  
Subject: Questions on 802.2(c)

Mike:

Following up my voicemail, I have the following two questions concerning the application of 802.2(c) (1) as it relates to timberland.

1. I understand that revenue of noncontiguous parcels would not be aggregated in determining whether the \$5 million total revenue threshold is surpassed in determining whether 802.2(c)(1) may be relied upon. To qualify as a separate, noncontiguous "parcel," there must be distinct, physical separation between it and the other parcels being sold. I understand that a public road, body of water, or real estate that is not included in the subject transaction would provide the requisite distinct physical separation to distinguish one parcel from another. On the other hand, a fence or a private road would not separate abutting real estate in to noncontiguous parcels. I assume that a non-physical demarcation such as a county line or town line would not qualify as a distinct physical separation that would distinguish one parcel from another, but ask that you confirm whether my assumption is correct. Are there any other specific boundaries on which you have set an informal position?

2. As to the determination of whether a particular parcel has generated \$5 million of total revenue within the past 36 months, (i) has the \$5 million threshold been adjusted upwards in the same manner as the notification thresholds (such that it would now be \$6 million)? and (ii) does "total" refer to the total of the NET sales over the past 36 months, or are we to look to the total GROSS revenue over that period?

Thanks in advance for your response (either by email, or by calling me at [REDACTED]).

Regards,

[REDACTED]

[REDACTED]

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1) You are correct in all of your assumptions regarding physical separation of the parcels. I am not aware of any other specific boundaries that we have opined on.

2) The \$5 MM limitation in the exemption is not annually adjusted. Net sales would be used in the calculation.

BM  
5/24/07