

Verne, B. Michael

802.4

From: [REDACTED]
Sent: Tuesday, June 03, 2008 11:39 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Ordinary Course question

Mike:

[REDACTED] and I wanted to confirm that our current transaction fits into the five-part ordinary course exemption described in your informal opinion # 9505007.

In our proposed transaction, the acquired person is selling an intangible asset, its 100% interest in an owner trust that currently owns a power plant and that will continue to own said plant after the closing of this transaction. The lessee /operator of the plant was and will remain an independent third party.

The five requirements in informal opinion # 9505007 were as follows:

(1) the assets are subject to a bona fide financial lease; (2) while title to the leased assets will pass to the buyer, control of the assets will remain with the existing lessee; (3) the assets must be subject to a long-term lease or a lease renewable at the lessee's option; (4) the acquiring person (i.e., the new lessor) does not compete with the existing lessee and (5) the seller is not exiting the leasing business, but intends to continue in its leasing activities.

We have jointly concluded that the transaction satisfies all elements of these tests. However, the one distinction we wanted to follow up with you about is the fact that in our transaction, the acquisition is of 100% of the interests in a trust, which itself owns the power plant and which is the lessor under the lease.

We don't see why this variation would change the competitive impact in any way, but we would appreciate it if you would please confirm that the exemption applies.

Best wishes,

[REDACTED]

IT WOULD BE EXEMPT
UNDER 802.4

[REDACTED]

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6/3/2008