

ITEM 5

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, August 24, 2010 10:51 AM
To: Verne, B. Michael
Subject: Response to item 5

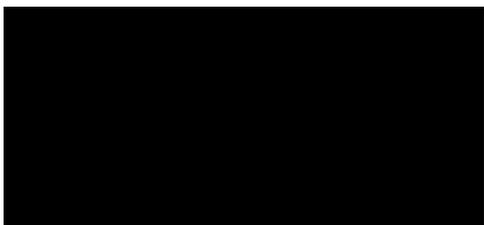
I represent the seller in an asset sale. The seller manufactures certain of its products and has others made by third parties. It is not selling any manufacturing assets but is selling intellectual property, customer lists, contracts and inventory. The seller also will agree to supply product to the Buyer, if desired, for a certain term.

The note on Item 5 on the web site states:

All revenues derived from sales by a U.S. entity regardless of the location of the customer are reported in item 5. Revenues of a U.S. manufacturer are not reported under a wholesale code unless the sale is made from a distribution facility which is separate from the manufacturing facility. In this case, revenues would be reported for both the manufacturing and wholesaling of the product. Thus if a manufacturer has wholesaling operations at its manufacturing facility, it would report all of its revenues under the manufacturing NAICS code.

① I have two questions. First, if a party manufactures product and then ships it to a warehouse owned by a third party who then sends out the product to customers on behalf of the manufacturer and accompanied by an invoice from the manufacturer, would one treat that as only manufacturing revenue or as both manufacturing and wholesaling?

② Second, in my context, where the assets being sold do not include the manufacturing facility, how would one report the revenues attributable to the brands being sold? If one tried to just list the revenue attributable to the brand the revenue would be zero. It seems to me that one should report the revenues attributable to the brands but footnote the fact that the manufacturing facilities are not being sold.



① Report ONLY MANUFACTURING
② CORRECT

BM
8/26/10

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