

ITEM 5

Verne, B. Michael

From: Verne, B. Michael
Sent: Tuesday, November 01, 2011 9:06 AM
To: [REDACTED]
Subject: RE: Item 5

My answers in ***[Bold Italic]***

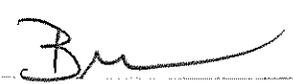
Hello Mike,

This is a request for clarification on how to report certain manufacturing revenues under the new Item 5. It arises from my efforts to reconcile (a) the guidance on the FTC Website that directs filers to report the sale of foreign-manufactured products to a controlled US entity at the transfer price, with (b) my understanding that one of the aims of the new Item 5 rules is to eliminate the "double-counting" that used to result from the old rules' approach to intercompany transfers and downstream sales.

Assume that the filer, Company A, has manufacturing operations both in the U.S. and abroad, and that those manufacturing operations make the same product -- widgets. Company A sells widgets from its manufacturing plants in the US to customers located both in the US and abroad. Company A also makes intercompany transfers of widgets from its foreign plants to its facilities in the US at an intercompany transfer price. Company A then sells the foreign-manufactured widgets to customers both in the US and abroad.

Given this pattern, I have several questions about how Company A would fill out Item 5:

- (1) Would Company A report the intercompany sales of widgets from foreign plants to controlled US facilities at the transfer price? ***[If the transfer price is the way it is captured – yes. If not, report the final sale price.]***
- (2) If the answer to (1) is "yes," would Company A use a manufacturing code (I believe it would)? ***[Yes – in both instances above you would report a manufacturing code]***
- (3) If the answer to (1) is "yes," would Company A then also report the sale of the same foreign-manufactured widgets from a US facility to customers downstream, even though this would amount to double-counting? ***[No – If you reported the transfer to the US entity that is all that is reported.]***
- (4) If the answer to (3) is "yes," would Company A report only the downstream sales of foreign-manufactured widgets from a U.S. facility to customers in the US, or also the downstream sales of foreign-manufactured widgets from a US facility to customers abroad? ***[See above – do not report the subsequent sale to either US or foreign customers.]***
- (5) If the answer to (3) is "yes," would Company A use a manufacturing code or a wholesale/retail code to report those downstream sales of foreign-manufactured widgets from a US facility? ***[See above]***


11/1/11

From: [REDACTED]
Sent: Thursday, October 27, 2011 3:02 PM
To: Verne, B. Michael
Subject: Item 5