

802-2 (h)

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, November 14, 2012 7:26 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Warehouse exemption

Mike,

[REDACTED] and I have a question about the application of the warehouse exemption to the following transaction.

My Client, Company A, is engaged in providing storage and ancillary terminalling services to third party petroleum, chemical, and trading customers in the United States and is acquiring Company B's terminalling operations. Company A does not trade or market product from its existing assets and will not trade or market product from its assets following the completion of the transaction. The transaction is being structured as an asset acquisition by Company A of Company B's assets including real property, personal property, commercial leases and third party terminalling agreements. The Purchase Price will be \$85 million, plus up to \$5 million of contingent earn-out related payments. Company A and Company B meet the HSR size of the persons tests.

Company B stores heavy and light petroleum products on behalf of itself and third party customers. Company B receives and distributes its products from either marine vessels or tanker trucks . Company B receives monthly payments from its customers in exchange for providing storage and other ancillary terminalling services including blending, heating, throughput, product blending, loading and unloading. Company B's storage revenue from third party customer accounts is approximately 80% of contracted revenue with ancillary services accounting for the remaining 20%. Company A is only acquiring Company B's terminalling assets and a leased transloading facility and not acquiring Company B's trading business in this transaction. Therefore, Company A will only use the Company B assets to provide storage and the other ancillary terminalling services to third party customers.

Company A has agreed to enter into a third party storage and terminalling agreement with Company B at the closing of the transaction to allow for Company B to continue its trading activities at the terminal. Following the closing of the transaction, the assets acquired from Company B will be used to service third party customer contracts only. Company A will continue to operate these assets in accordance with how it operates its other assets in the United States where it does not market or take ownership of petrochemical products and simply provides storage and ancillary terminalling services to it's customers.

We believe this transaction would qualify for the warehouse exemption, but wanted to verify. Thanks very much for your help.

Regards,

[REDACTED]

AGNEE-
B
11/15/12
K. WALSH CORP