Verne, B. Michael

From:

Sent: To: Tuesday, February 12, 2013 2:51 PM

Verne, B. Michael; Walsh, Kathryn

Subject:

Item 8 -- Foreign Person's Prior Acquisitions of Foreign Entities

Mike and Kate -

I have a question about Item 8 on which I've been unable to find any prior informal advice, perhaps because it results from relatively recent changes to the form and rules.

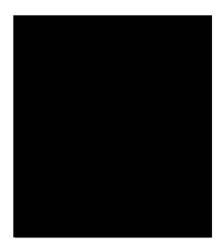
Item 5 is limited to U.S. operations and sales into the U.S., and the Item 5 data is the basis for identifying overlapping NAICS codes. It is clear from Item 7 that the information called for there likewise is limited to U.S. operations and revenues.

Since Items 5 and 7 drive Item 8, it seems logical that in responding to Item 8 you should not need to consider prior acquisitions by a foreign person of foreign entities if those entities have no U.S. revenue that is counted for Item 5 purposes (that is, they themselves have no sales in or into the U.S.).

Prior to the 2011 changes to the form and rules, it was clear that Item 8 did not cover foreign acquisitions, as former Rule 803.2(c)(1) limited responses to Items 5, 7 and 8 to information "with respect to operations conducted within the United States." See Notice of Proposed Rulemaking, 75 Fed. Reg. 57110 (Sept. 17, 2010). While that provision was deleted, the NOPR makes clear that the only non-U.S. information now required involves foreign entities that have U.S. operations or revenues. See id. at 57111, 57117, 57121. (The only change made to Item 8 was to include non-corporate interests, id. at 57119.)

That continuing limitation is evident from the Item 5 instructions, the PNO website's resource sheets for Items 5 and 6 and the text of Item 7. However, because it is not expressly stated in the Item 8 instructions, I wanted to confirm with you that Item 8 is limited to a foreign person's prior acquisitions of entities having U.S. revenues reported in Item 5 (as well as being subject to the other cut-offs in those Instructions).

Thanks as always for your help.



This is comect
Brillia

ZIIZIIA

KW CONCURS