802.51
ITEM 5

Verne, B. Michael

From: [redacted]
Sent: Wednesday, May 07, 2014 11:16 AM
To: Verne, B. Michael
Subject: US Sales

Hi Mike,

I have a Canadian target that has no US assets. Regarding its sales last year, it provided construction services in Canada to a US company that is building something in Canada. The agreement for the services was negotiated and signed by the US customer in the US and payment was made to an account in a bank in the US.

I have seen interpretations that say if it is booked through a US entity then it is a US sale, but I have also seen where service revenue is allocated to the place where it is earned. I have run this by some colleagues but we did not agree on a conclusion. Is there a difference between the US sales for 802.50/802.51 and Item 5(a)? My question is in respect to the exemption.

Thank you,

[redacted]

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I think that we have been consistent in saying that a service that is provided outside of the US is not a sale into the US even if the customer is US. I don't think that changes because the revenues for the service are booked by a US sub of the provider of the services. It would, however, be reported in Item 5, because the revenues are derived by a US establishment.

The other main differences between Item 5 and the foreign exemptions:

Export sales by a US entity are reported in Item 5, but are not sales in or into the US for the foreign exemptions.

Sales of non-manufactured products (e.g., ore mined outside of the US) by a foreign entity to a US customer are not reported in Item 5, but are sales into the US for purposes of the foreign exemptions.

Bmw
5/7/14

KW CONCURS.