

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Monday, October 15, 2018 10:50 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Shaffer, Kristin; Sheinberg, Samuel I.; Whitehead, Nora
Subject: FW: New Goods Exemption

From: Carson, Timothy
Sent: Monday, October 15, 2018 10:50:26 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: New Goods Exemption

1. We agree that the real property assets you describe are exempt under 802.2.(c)
2. The equipment you describe is not exempt under 802.1(b). Rule 802.1(b) requires that the acquisition be in the ordinary course of business. The acquisition of wind farm equipment in connection with the overall purchase of a wind farm development (whether complete or not) is not in the ordinary course of business.

From: [REDACTED]
Sent: Thursday, October 11, 2018 11:56:13 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: New Goods Exemption

I would appreciate confirmation that the acquisition of certain assets of the acquired entity as described below would be exempt per 802.2(c) and 802.1(b).

Facts

- Company X is selling a subsidiary wind farm development company.
- The development company's assets include real property leases, options for real property, and interconnection rights and equipment (turbines) to be installed on the property.
- None of the assets of the development company have generated any revenue.
- The equipment is owned by the development company but is being stored for the development company by the manufacturer, and, at closing, the development company will still be months away from beginning construction.
- Company X will not exit the wind farm business entirely, as it will still operate wind farms in other locations, and the development company has not generated any revenues from the assets.

Can you confirm the following:

1. The real property assets – the leases, options – are real property interests and, as having not generated any revenue and do not consist of a “facility”, are exempt assets under 802.2(c) - Unproductive Real Property.
2. The equipment is exempt under 802.1(b) – new goods – because the sale is not of an “operating unit” (Company X is not exiting the wind farm business and the development company has derived no revenue from the equipment) and the goods are new.

[REDACTED]

[REDACTED]

[REDACTED]

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