

802.5

August 18, 2005

Ms. Janice Johnson
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
600 Pennsylvania Ave., N.W.
Washington, DC 20580

Re: Treatment of timberland as investment rental property under 16 CFR § 802.5

Dear Ms. Johnson:

I am writing to confirm the advice you gave to me in our conversation on Monday, August 15.

I had called you last week to discuss the application of the investment rental property exemption (16 CFR § 802.5) to a proposed acquisition of timberland. A portion of the timberland involved in the transaction is currently subject to cutting contracts of the sort contemplated by Section 631(b) of the Internal Revenue Code ("631(b) cutting contracts").

I told you I am aware of two informal interpretations¹ by the staff of the Premerger Notification Office which deal with 631(b) cutting contracts. In each of these cases the acquiring person was a real estate investment trust which intended to enter into 631(b) cutting contracts with persons not included within the acquiring person and the staff concurred that the timberland could be treated as investment rental property exempt from notification pursuant to 16 CFR § 802.5.

I also explained that I am aware of an informal interpretation² which suggests that the investment rental property exemption is available only where the realty is rented or held for rent by the selling person. The rationale expressed in the interpretation was that the staff did not want to rely solely on the intention of the buyer (which might change after purchase).

I asked for advice:

1. Whether in the characterization of timberland subject to a 631(b) cutting contract as investment rental property was dependent upon the acquiring person being a real estate investment trust or whether the exemption would also be available to an acquiring person which was not a REIT; and

¹ See informal interpretations 9902010 and 0404027.

² See informal interpretation 9903010.

Ms. Janice Johnson
Page 2
August 18, 2005

2. Whether the investment rental property exemption would be available for all of the timberland for which the acquiring person intended to enter into 631(b) cutting contracts with persons not included within the acquiring person or only for timberland which was presently subject to a 631(b) cutting contract.

You advised me that (1) the acquiring person need not be a REIT for the exemption to be available, and (2) the availability of the exemption would depend on the intention at the time of closing of the acquiring person to enter into a 631(b) cutting contract not upon whether the specific timberland was presently subject to a 631(b) cutting contract.

Please call me at [REDACTED] to confirm whether I have accurately summarized our conversation and your advice.

Very truly yours,

[REDACTED]

I informed the writer that the first part of his conclusion is correct - that the acquiring person need not be a REIT to qualify for the 802.5 exemption. I then informed the writer that the availability of this exemption would depend on whether the timberland is currently being rented, or if not currently being rented, then held by the seller for renting.

J Johnson
N. Ortez concurs