

Ovuka, Nancy M.

802.2(a)

**From:** [REDACTED]  
**Sent:** Thursday, January 12, 2006 7:26 PM  
**To:** Ovuka, Nancy M.  
**Subject:** New Facilities Exemption

As a follow up to our conversation, this is fact pattern. Please assume the size of the parties test is met by the UPE's of all parties.

[REDACTED] ("Seller") owns 100% of the membership interests of [REDACTED] limited liability company (the "Company").

The Company is a special purpose entity formed for the sole purpose of developing a 63 MW wind power plant (the "Facility") for sale to a third party. At this point the Company's sole assets consist of leases, permits, contracts and development rights. Construction of the Facility has not yet begun. The Company has no revenues.

Seller intends to enter into a Membership Interest Purchase Agreement with a buyer ("Buyer") pursuant to which Buyer will acquire 100% of the Membership Interests of the Company for a purchase price of \$6 million. Simultaneously at the Closing in which Buyer will take ownership of the Company, the Company will enter into contracts for the construction of the Facility with an aggregate contract price of approximately \$80 million.

If Seller had constructed the Facility and sold it to Buyer after it was completed but before it began generating revenues (other than test revenues), the sale should qualify for the New Facilities exemption.

Assuming that the \$53.1 million filing threshold has been met (which it may not under this fact pattern), it seems that the proposed sale should similarly qualify for the New Facilities exemption since all of the requirements have been met but instead of selling a completed facility the Company is being sold with the construction contracts to complete the facility.

1/13/06

Purchase price is \$6mm, but  
 even if it exceeded \$53.1mm  
 (as adjusted), the New Facilities  
 Exemption under 802.2(a) would  
 not apply

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