

Verne, B. Michael

Item 5

From: [REDACTED]
Sent: Wednesday, February 01, 2006 1:56 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Item 5 Revenue Question

Mike -

We are working with a client with lots of non-US revenue and struggling a bit with how to properly report it for purposes of Item 5. We're wrestling with the statements in Rule 803.2(c)(1) ("operations conducted within the United States"), Rule 803.2(d) ("dollar revenues include interplant transfers") and Interpretation 281 from the Premerger Notification Practice Manual ("sales of products manufactured by the reporting person in its own plants located outside the United States should not be shown as manufacturing revenues, regardless of where or to whom they are sold").

Here's the situation and we'd appreciate your guidance.

Parent is a US-based company that will report under two separate 6-digit NAICS manufacturing codes. Parent has dozens of US domiciled subsidiaries and non-US domiciled subsidiaries.

For the US-domiciled subsidiaries' direct sales into the US market, that's easy - we'll report this as manufacturing revenue.

US-domiciled subsidiaries also have revenue based on manufactured goods which are shipped to other Parent controlled entities both within and outside the US for ultimate sales within and outside the US. My inclination is to report this as manufacturing revenue as well per 803.2(d).

There is one subsidiary incorporated in the US but which has its sole location outside the US where does manufacturing. This entity sells into both the US and non-US markets. As this is a US incorporated subsidiary (albeit with a foreign presence), again, my inclination is to report this as manufacturing revenue, but query whether these are "operations conducted within the United States?"

There is one subsidiary incorporated in the US, which has its sole location outside the US but it does not do manufacturing. This entity is simply a reseller into non-US markets. Same question as above though I think maybe I would report this as non-manufacturing revenue?

Finally, there are many subsidiaries which are incorporated and based outside the US which sell only outside the US. For perspective this accounts for about 45% of the Parent's worldwide revenue. Per Interpretation 281 above, my inclination here is to report this revenue under a non-manufacturing code, but under Rule 803.2(c)(1), I wonder if I can exclude it altogether as operations not conducted

IN THE U.S.

Bruce
2.1.06

For the subsidiary incorporated in the US but which has its sole location outside the US where it does manufacturing, do not report anything in Item 5 for direct sales either to US or non-US customers.

For the subsidiary incorporated in the US, which has its sole location outside the US but it does not do manufacturing, again do not report any direct sales either to US or non-US customers.

For the subsidiaries which are incorporated and based outside the US which sell only outside the US, again report nothing in Item 5.