

Rule 802.5



KEYWORDS AT LAST

Facsimile

CONFIDENTIAL

Date: February 25, 1999

Pages (including cover): 3

TO:

Recipient Name	Firm/Company	Fax	Telephone
Alice Villavicencio	Premerget Notification Office - Federal Trade Commission	202 326.2624	202 326 3155

FROM: [Redacted] Email address: [Redacted]
 Telephone: [Redacted] User number: [Redacted] ext number [Redacted]
 Message:

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Rule 802.5

February 25, 1999

VIA TELECOMER

Ms. Alice Villavicencio
Premerger Notification Office
Federal Trade Commission
6th Street and Pennsylvania Avenues
Washington DC 20580

Dear Ms. Villavicencio:

I am writing to confirm the conclusion we reached during our telephone conversation today that the transaction described below is exempt under section 802.5 of the Premerger Notification Rules.

A corporation which is a "real estate investment trust" for Federal tax purposes (the "REIT") is a party to a merger agreement pursuant to which a partnership controlled by the REIT (the "Subsidiary") will become the owner of all of the equity interests of a limited liability company ("Timber Co.") through the merger of a partnership which owns those equity interests into the Subsidiary. The only material assets of Timber Co. are timberlands and associated timber cutting and related agreements. The merging partnership has no material assets other than the Timber Co. equity interests.

The parties satisfy the size of the parties test. The assets of Timber Co., which the REIT is deemed to be acquiring through the acquisition of 100% of the limited liability company interests, have a value in excess of \$15 million. There has been sufficient cutting and removal of timber from one or more of the tracts owned by Timber Co. that the transaction would not qualify for exemption under section 802.2(c). The REIT will not lease for its own use any of the Timber Co.'s assets.

Given the significant restrictions imposed by the Internal Revenue Code on the type of income a "real estate investment trust" can have, the REIT intends to generate income from the Timber Co.'s assets pursuant to section 631(b) of the Internal Revenue Code. As we have discussed in the past, section 631(b) provides for a passive method of timber disposition. A timber owner wishing to take advantage of section 631(b) enters into a cutting contract with the timber purchaser

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in the nature of a royalty agreement, pursuant to which the timber purchaser enters onto the property, cuts the timber and pays the owner based upon the volume of timber removed by the purchaser from the property. The Internal Revenue Service has recognized the passive nature of these cutting contract arrangements. The Internal Revenue Service regards the underlying transaction as a "lease" of the timber property, producing a form of royalty income.

*is not
for
other
parties*

Given the intent of the REIT to generate income through section 631(b) contracts, we concurred that the transaction is exempt under Section 631(b).

Please let me know promptly if I have misunderstood our conversation.

Thank you for your assistance on this matter.

[Redacted signature block]

March 1, 1999
"Investment real estate property" - the real estate property will be transferred according to this letter and telephone conversation with the author of this letter. Exempt under Rule 802.5.
AMV

[Redacted mark]