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From:
Sent: [Monday, February 23, 2009 10:09 AM]
To:

Cc:
Subject: View on Down Economy

[On February 5th we had joint -USCA training on dealing with transfer pricing issues when there is a down economy.

I want to clarify that the Program takes the position that the characterization of a tested party as a "routine distributor" or "contract manufacturer" does not preclude an arm's-length range that includes negative profitability.

There was a comment during the discussions that if a tested party had, prior to the economic downturn, been characterized as being virtually risk free then a change in the characterization of such an entity to a routine entity or high risk entity during the economic downturn might not be acceptable if that results in an arm's-length range that includes negative profitability. This represents a special case for which we will need to consider the specific facts and circumstances. But this type of case is distinguishable from the "routine distributor" or "contract manufacturer" case mentioned above.