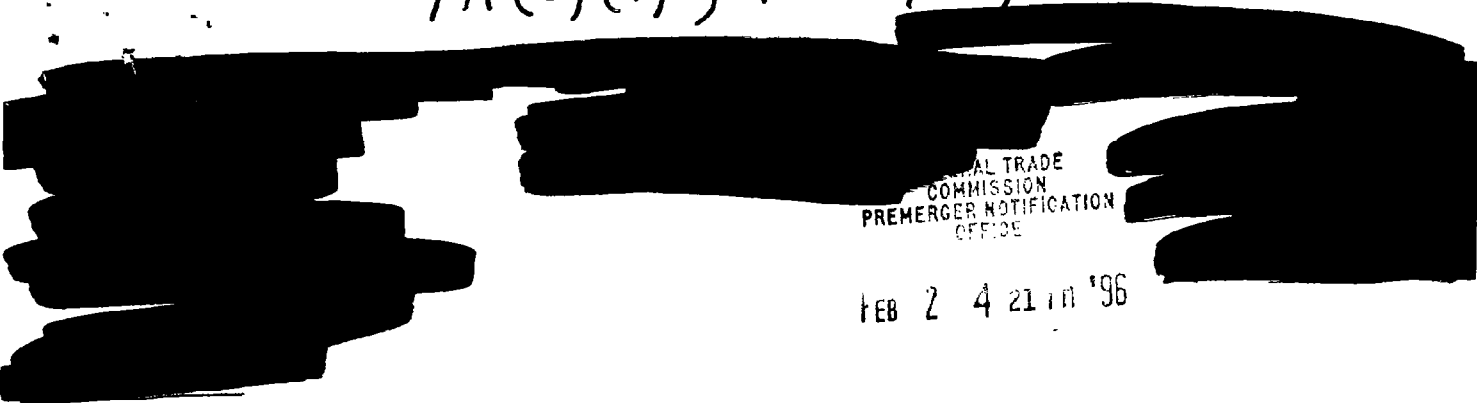


7A(c)(1); 7A(c)(2)



FEDERAL TRADE  
COMMISSION  
PREMERGER NOTIFICATION  
OFFICE

FEB 2 4 21 10 '96

February 2, 1996

**CONFIDENTIAL**

By Hand

Richard B. Smith, Esq.

Washington, D.C. 20004

Dear Dick:

Following up on our telephone conversation of Wednesday, this letter is intended to elaborate on my letter to you of January 30, 1996. Specifically, this letter sets forth additional information about the "production payment" that was described in my earlier letter.

For purposes of federal income taxes, Section 636 of the Internal Revenue Code treats a production payment as a mortgage interest. In other words, for income tax purposes, the grantor of

Under [redacted] law, a production payment is a royalty interest, in this case in gas production. Although the holder of a production payment may have implied or contractual rights to cause

classic interest in real property such as fee simple, life

of the client's...  
to...  
✓

Richard B. Smith  
February 2, 1996  
Page 2

CONFIDENTIAL

As you and I discussed, law provides that a production payment is considered to be a real property interest (i.e. a royalty); however, once the gas is produced from the well, then the severed gas constitutes personal property. There is case law in

The length of the production payment in the transaction at hand is measured by a volume of production: it is expected in this

produce the share attributable to the production payment. when

We greatly appreciate the attention you gave to our request for advice earlier this week. We are well aware of the great demands on the Premerger Office and your immediate response greatly assisted the parties to the transaction.

If you have any further questions, please call.

Sincerely,

Oil and Gas

company's taking of the production payment from the sale of an undivided percentage interest in the production payment to Oil and Gas Financing Company, which will

in its ordinary course of business (or in gas produced therefrom) appears to be part of the producing property and, as such, should qualify for a TA (C)(1) exemption. Might also be viewed as the purchase of an interest in a mortgage, which would be exempt under TA (C)(2).

RB Smith