

801.40

From: [REDACTED]
To: "Mike Verne (E-mail)" <mverne@rtc.gov>
Date: 7/22/02 1:57PM
Subject: 801.40 (again)

Sorry to be so thick-skulled today, but it's Monday. I have the following admittedly basic question.

Corporation forms a wholly-owned subsidiary, for purposes of buying all the stock of another corporation. Shareholders of the target receive some cash and some common stock of the wholly-owned subsidiary/buyer. Is the initial formation of the wholly-owned subsidiary potentially reportable under 801.40. Or is 801.40 inapplicable because the target company shareholders get their shares of the buyer only when the second transaction takes place? What if it all happens simultaneously?

The same question may be re-phrased: do the shareholders of target become "forming shareholders" of the wholly-owned subsidiary of the buyer, because of the fact that their sales of their shares of the target company are "contributions" to the newly-formed corporation, at least to the extent that they get back any shares in the subsidiary/buyer?

[REDACTED]

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ADVISED THAT I WOULD NOT VIEW EITHER
OF THESE SCENARIOS AS 801.40 FORMATIONS.
N. OVURA CONCURS.

Bucher
7/22/02