802.51

Michael Verne

From: [redacted]
Sent: Tuesday, December 17, 2002 8:09 AM
To: Michael Verne
Subject: Here's the hypothetical that I left you a phonemail message on

US buyer is acquiring all of the stock of a foreign issuer subsidiary of a foreign parent. The subsidiary conducts two businesses. Buyer wants to acquire only one of the two businesses, so foreign issuer subsidiary transfers the assets of the other business to its foreign parent. Buyer then acquires the foreign issuer (and its remaining business).

In the last full fiscal year, foreign issuer had $60 million of sales in or into the U.S., about $30 million of which was attributable to each of its two businesses.

Is the acquisition of the stock of foreign issuer exempt because the sales attributable to the assets that it holds at the time of the acquisition accounted for less than $50 million worth of sales in or into the U.S.? Or is it reportable because in a stock acquisition you have to look to the financials for the issuer as it existed during the year in which it generated its last full fiscal year's sales?

The latter interpretation would, in effect, force the parties to structure the deal as an asset acquisition in order to be exempt or, conversely, penalize them if they had to use a stock acquisition structure.

[redacted]

ADVISED THAT A PRO-FORMA STATEMENT OF SALES IN OR INTO US COULD BE USED WHICH REFLECTS ONLY THE BUSINESS THE ISSUER WILL HOLD AT THE TIME OF THE ACQUISITION. N. OVUKA CONCURS.

B Michael Verne

12/17/02