

7A(C)(3)

Verne, Michael

From: [REDACTED]
Sent: Monday, November 10, 2003 1:11 PM
To: Verne, Michael
Subject: Intraperson Exemption

Mike - I'm looking at a situation as follows.

A holds 60% of the voting securities of Corporation X. B, C and D each hold 5%. The public holds 25%. A, B, C and D intend to take X private. To do so, they anticipate forming a new LLC, to which they will contribute their respective shares of X. Given their relative holdings, A will control the LLC under the HSR rules. The LLC will then acquire the remaining 25% of X's shares from the public over time.

I think that the LLC formation would be exempt (since there are not multiple businesses being contributed, just multiple shareholdings in the same entity). My question relates to the LLC's subsequent acquisition of public shares, and whether 802.30 would apply to that. I know that intraperson applies when the acquiring and acquired persons are the same by virtue of holdings of voting securities. Interp. 234 deals with a situation where a UPE controls an LLC, which owns 100% of the shares of Issuer. When UPE acquires, directly, 100% of the shares of Issuer, that is not intraperson exempt because the pre-acquisition shares are held through the controlled LLC, while post-acquisition they are directly held by the UPE, not through the LLC. My scenario is different because I will have a controlled LLC making additional acquisitions of an entity that the LLC already controls: the LLC will be taking its holdings from 7! 5% to 100%. I'm not sure whether we would lose our intraperson exemption because the entity making the acquisition is not controlled by voting securities since it is an LLC.

Any thoughts on that? As always, thanks for your help.

[REDACTED]

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NOT EXEMPT UNDER 802.30,
BUT IS EXEMPT UNDER
7A(C)(3)

B. Michael
11/10/03

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