

802.2

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, April 13, 2004 5:31 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Unproductive Real Property Exemption Confirmation

Mr. Verne

During a telephone conversation and email on April 8, 2004, I outlined a transaction to you that involved our client, Company A. At that time, I explained that Company A and Company B are the sole members of a limited liability company ("LLC X"). Company A and Company B's interests in LLC X are 60% and 40%, respectively. The parties are contemplating a transaction pursuant to which Company A will acquire all of Company B's interest in LLC X.

In my April 8th email, I also explained that the sole asset of LLC X is an arena (the "Arena"). LLC X generates revenues from this property by leasing the Arena for large scale events (professional sporting events, concerts, trade shows, etc.), through advertising and sponsorship arrangements and through concessions sales by third-party vendors. Of the revenues generated by the property in fiscal year 2003, less than 10% were paid to LLC X by entities included within Company A. By email dated April 12, 2004, you confirmed that Company A could treat as exempt an amount equal to the fair market value of the entire Arena reduced by the value attributable to entities included within Company A.

This afternoon we had a second conversation regarding another sale of membership interests in a separate but related limited liability company ("LLC Y"). LLC Y has two members, Company C (our client) and Company D. Company C and Company D's interests in LLC Y are 60% and 40%, respectively. The parties are contemplating a transaction pursuant to which Company C will acquire all of Company D's membership interests in LLC Y. The sole asset of LLC Y is five undeveloped lots (Lots A through E) surrounding the Arena (the "Lots"). The Lots are used for parking during events held at the Arena. The Lots are separate, non-contiguous parcels. With the exception of Lot E, none of the Lots generated revenues in excess of \$5 million in the preceding 36 months. Company UPE will be the ultimate parent entity in both Company A's acquisition of the membership interests of LLC X and Company C's acquisition of the membership interests of LLC Y. Such transactions will be treated as a single transaction for HSR purposes and, pursuant to Formal Interpretation 15, will be considered the acquisition of 100% of the membership interests of LLC X and LLC Y. The transaction will be reportable as the acquisition of all of the assets of LLC X and LLC Y and Company UPE will be both the acquiring and acquired person.

Under § 802.2(c) of the HSR regulations (the "Unproductive Real Property Exemption"), unproductive real property is exempt from the requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"). "Unproductive real property" is any real property, including raw land, structures or other improvements (but excluding equipment), that has not generated total revenues in excess of \$5 million during the thirty-six (36) months preceding the acquisition. Unproductive real property does not include real property that is either adjacent to or used in conjunction with real property that is not unproductive real property and is included in the acquisition. In Informal Interpretation 0111003 dated November 13, 2001, the FTC was asked to confirm if certain unproductive real property that was adjacent to productive real property which was part of the transaction but qualified for a separate asset exemption under the HSR regulations, does such unproductive real property qualify for the Unproductive Real Property Exemption. Under the facts presented, the FTC confirmed that reliance on the Unproductive Real Property Exemption was appropriate.

During our conversation today and based on the foregoing facts (some of which we have expanded upon in this email for clarity purposes), I inquired whether Company UPE could treat as exempt from the requirements of the Act under the Unproductive Real Estate Exemption, the same pro rata portion of the value of the Lots as it treats as exempt from the value of the Arena. I understood your position to be that it would be appropriate to exempt from the requirements of the Act pursuant to the Unproductive Real Property Exemption, an amount equal to the value of the Lots (with the exception of Lot E which does not qualify for the Unproductive Real Estate Exemption because it has generated revenues in excess of \$5 million in the preceding 36 months) multiplied by the same percentage used to determine the appropriate pro rata portion of the value of the Arena that was exempt from the requirements of the Act for the reasons discussed above.

I respectfully request that you contact me by email or at (303) 866-0649 to confirm that the foregoing accurately summarizes our conversation and your views on the matters discussed herein. Thank you for your attention to this matter.



AGREL.
B. [Signature]
4/13/04

Fax: [Redacted]
Please note my new email address is [Redacted]

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