

Verne, B. Michael

801.40
801.50
802.4

From: [REDACTED]
Sent: Wednesday, March 16, 2005 7:54 AM
To: Verne, B. Michael
Subject: Question under 801.50

I have encountered a question under 801.50 that relates to the interplay between 801.40(d) and 802.4.

In connection with the formation of an unincorporated entity, 801.40(d) says I have to include assets which, as of the time of formation, the forming parties have agreed to contribute to the new entity at any time. And I have to do that, not only to determine the size of the new entity, but also to determine whether any exemptions apply to its formation.

Let's suppose that the forming members have agreed to contribute at some future time certain specifically identified assets (or kinds of assets) that I can, in turn, determine would be exempt (for example, a hotel without a casino). I take it that I have to include those future agreed-upon asset contributions in the HSR analysis but can use 802.2, and therefore 802.4, to determine whether, at the time of formation, the forming parties will have agreed to contribute more than \$53.1 million of "non-exempt" assets to the new entity. And if they haven't, then the formation will escape reporting by reason of 802.4.

Yes?

[REDACTED]

AGLES.
B. Michael
3/16/05

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