801.15
802.4
802.51

Verne, B. Michael

From: [redacted]
Sent: Friday, July 22, 2005 2:15 PM
To: Verne, B. Michael
Subject: RE: HSR question on 802.51

It's even more complicated, isn't it, because I have to think about 802.4. I take it that if the foreign assets of the two subsidiaries and the two unincorporated entities collectively generated sales in or into the US of less than $53.1 million, then those foreign assets would be "exempt assets" for purposes of 802.4, and I could consider whether the collective fair market value of all the "non-exempt" assets held by the four entities was less than $53.1 million and therefore potentially exempt under 802.4. Yes?

[redacted]

From: [redacted]
Sent: Friday, July 22, 2005 2:11 PM
To: Verne, B. Michael
Subject: HSR question on 802.51

X is buying from a single acquired person all of the stock of two foreign corporations and all of the non-corporate interests in two unincorporated entities. I know that for purposes of applying 802.51, I have to determine the combined fair market value of the US assets (if any) held by the two foreign corporations and the combined sales in or into the US made by the two foreign corporations. But how do I then integrate into that analysis the acquisitions of the non-corporate entities? If as a result of the transaction X will be viewed as holding all of the assets of the unincorporated entities, then I would think I would treat the unincorporated entities as though X were acquiring their assets (directly). It seems to me that means that under 801.15(d) I have to add to the combined sales of the corporate subsidiaries made in or into the US in the most recent year any most recent year sales in or into the US attributable to any foreign assets held by the unincorporated entities, and the exemption survives only if the combined US sales attributable to the foreign subsidiaries and the foreign assets of the unincorporated entities is less than $53.1 million. I suppose that the exemption would also be lost if the fair market value of the assets located in the US held by the foreign subsidiaries combined with the fair market value of any US assets held by the unincorporated entities exceeded $53.1 million.

Am I right that I have to combine the US assets attributable to both the foreign subsidiaries and the foreign unincorporated entities? And the sales in or into the US made by the foreign subs and the foreign assets held by the unincorporated entities (but not necessarily all the US sales by the unincorporated entities)?

The suggested corollary is that 802.51 doesn't apply to acquisition of control of a foreign unincorporated entity, but 802.50 does. And 801.15(d) requires aggregation across foreign assets and foreign issuers, although not necessarily across unincorporated entities organized and headquartered outside the US.

Does it make any difference whether the unincorporated entities are foreign? Or would the analysis be the same for acquisition of control of any unincorporated entity that had some foreign assets.

Help (!)

[redacted]

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The 802.4 analysis is the proper one.

B. Michael
7/22/05