801.2(d)

Verne, B. Michael

From: [redacted]
Sent: Friday, September 09, 2005 3:06 PM
To: Verne, B. Michael
Subject: Section 802.1(d) Exemption

I have a situation where a client is selling some manufacturing equipment for approximately $73,000,000. The machinery seems to meet the definition of a "durable good", as it is designed to be used repeatedly and has a useful life of greater than one year. Furthermore, the Acquiring Person will represent to us that they are acquiring the machinery for resale to an entity not within the Acquiring Person (which seems to meet the 802.1(d)(1) exemption).

The question is with regards to whether or not this is an Operating Unit. The Acquired Person is ceasing to manufacture a particular product located in a particular facility. The sole activity in this facility is the manufacture of this particular product and the machinery represents the bulk of the assets located at such facility. However, the Acquiring Person is not acquiring any intellectual property associated with this machinery (i.e., what they use the machinery for is their business), they are not acquiring any inventory, raw materials or any customer lists and they are not acquiring any real property or structures which currently house the machinery. Nor will any of the employees be following the equipment. So although the Acquiring Person is buying the bulk of the hard assets of a particular business in a particular location, the Acquiring Person would require a lot of effort and expense to recreate this business.

With this fact pattern in mind, is an 802.1(d)(1) exemption appropriate?

Please let me know. I can be reached via e-mail or by phone at [redacted] Thank you as always.

[redacted]

WE WOULD VIEW THIS AS AN OPERATING UNIT SO 801.2(d) WOULD NOT APPLY. N. OVUKA CONCURS.
B. Michael
9/9/05

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