

802.30
801.1(b)

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, September 29, 2005 9:49 AM
To: Verne, B. Michael
Subject: 802.30/801.1(b)

Hi Mike,

I have a quick question regarding the intraperson exemption and the treatment of non-profit corporations that do not have voting securities.

First, I want to confirm that the merger of a subsidiary into its parent is exempt under 802.30 provided that the parent controls the subsidiary. It seems like this example would clearly fit within the 802.30 exemption but I want to confirm as I couldn't find any examples on point.

Second, I want to confirm the control test for a non-profit corporation that does not have voting securities. My understanding is that a non-profit corporation that does not have voting securities would fall under the 801.1(b)(2) control test because, even though the non-profit does not have voting securities, it is incorporated and therefore not treated as an unincorporated entity under 801.1(b)(1)(ii). However, example #3 under 801.1(b) seems to indicate that a non-profit hospital corporation that does not issue voting securities would fall under the 801.1(b)(1)(ii) control test. Could you please provide some guidance as to which control test(s) apply to a non-profit corporation that does not have voting securities.

Thank you for your assistance,
[REDACTED]

1) AGREE - EXEMPT UNDER 802.30
2) 801.1(b)(2) IS THE CORRECT TEST. THE EXAMPLE NEEDS TO BE CORRECTED.

[REDACTED]

B. Michael
9/29/05

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