

801.13  
802.4

Verne, B. Michael

From: [REDACTED]  
Sent: Wednesday, February 08, 2006 12:09 PM  
To: Verne, B. Michael  
Subject: Acquisition of US Person by Foreign Person

Mike, I have not had the opportunity to correspond with you yet this year, and will not be able to make the Spring Meeting, so allow me to wish you a happy new year!

We have a stock transaction that is just getting started, and I wanted to run some questions by you:

A European family-owned company (assume it is a foreign person) is acquiring the shares of a US family-owned company (Target). The Target is owned equally by three family members who will each sell their shares as part of the same transaction to the buyer. Consequently, the buyer will end up with 100% of the shares of the Target. The total purchase price is \$70 million (each family member would receive 1/3rd).

1. Am I correct that this is still treated as one transaction for purposes of determining the size of transaction test?
2. The Target has subsidiaries outside the US which will be acquired as part of the transaction (because they are subsidiaries). If you deduct the value of these subsidiaries from the purchase price, we could be around the \$56 million level. The question is: in a share deal should I deduct the value of the foreign entities being (indirectly) acquired?
3. Apparently the three family members selling the Target also have some companies which they hold personally (mostly real estate) outside the Target. The idea is to purchase these entities too. I assume that these are not separate transactions for purposes of the HSR, but wanted to get your thoughts on that as well.

If you need more information to answer these questions, just let me know.

Kind regards, [REDACTED]

[REDACTED]

- 1) YES
- 2) NO - BUT IF THEIR UNDERLYING ASSETS DO NOT HAVE SUFFICIENT NEXUS WITH THE US, THEIR FAIR MARKET VALUE WOULD NOT COUNT TOWARD THE LIMITATION IN 802.4
- 3) IF THEY ARE NOT CONTROLLED BY TARGET, THEY ARE SEPARATE TRANSACTIONS

*B. Michael*

2/9/06

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