

Verne, B. Michael

801.40
802.4

From: [REDACTED]
Sent: Monday, September 11, 2006 2:45 PM
To: Verne, B. Michael
Subject: Question under the HSR rules

Michael:

Three individuals (X, Y and Z) each hold shares in three companies (A, B and C) and are the only shareholders of these companies. X holds a controlling interest in all three companies. The parties wish to form a Holdco (corporation) that will combine the three companies. X will acquire a controlling interest in Holdco. My question is whether Y and Z have to worry about possible reporting obligations under 801.40, if the value of their respective interests in Holdco exceed \$56.7 million.

As I understand the interplay of 801.40 and 802.4 and 802.30(c), individual Y would first determine whether the FMV of the non-exempt assets (i.e., those contributed by X and Z) exceeds \$56.7 million. If it doesn't, then Y doesn't have to file because Holdco doesn't have at least \$56.7 million of non-exempt assets. If Holdco has more than \$56.7 million of non-exempt assets, then Y has to file if the value of the shares of Holdco that it acquires in the formation transaction exceeds \$56.7 million (and SOP tests are met). Presumably Y has to value its shares with reference to the percentage of the entire enterprise that its stock represents (and the value of the enterprise includes the value of Y's contribution as well as those of X and Z).

Same exercise for Z.

If Holdco were instead formed as a non-corporate entity, nobody has filings, because X gets intra-person treatment, and neither Y nor Z will acquire a controlling interest in Holdco.

Have I got the analysis right?

[REDACTED]

[REDACTED]

AGREE -
B. Michael
9/11/06

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