801.40

Verne, B. Michael

From: [redacted]
Sent: Monday, December 18, 2006 11:13 AM
To: Verne, B. Michael
Subject: Joint Venture HSR filing notification

Michael:

I have never had to confront the question of when the formation of a JV requires a filing, and would appreciate some guidance with respect to the following:

Background

Company A and Company B will form a 50/50 joint venture (JV). Both Company A and Company B have sales or assets in excess of $113 million.

Scenario 1: At the time the JV is formed, Company A will contribute $2 million in assets and Company B will contribute $2 million. Thus, the JV will have total assets of $4 million.

Conclusion: The formation of this JV is not reportable.

Scenario 2: At the time the JV is formed, Company A will contribute $2 million in assets and Company B will contribute $2 million. In addition, Company A and Company B agree at the time the JV is formed to jointly purchase property worth $80 million and contribute that property, once purchased, to the JV. Conclusion: Because Company A and Company B agreed at the time the JV was formed to contribute assets in excess of $11.3 million, and the JV (acquired person) had assets in excess of $56.7 million, the JV is reportable at the time it is formed. (FMV of the land is in excess of $56.7 million, so the value of the transaction is in excess of $56.7 million)

Scenario 3: At the time the JV is formed, Company A will contribute $2 million in assets and Company B will contribute $2 million. The purpose of the JV is to explore whether Company A and Company B can obtain approval for a building project. Later, the JV obtains approval and Company A and Company B contribute land to the JV worth $80 million. The land is to be used for the building project.

Conclusion: This transaction is not reportable at the time it is formed because the JV did not have sales or assets in excess of $11.3 million; and at the time of formation, the JV did not have a FMV in excess of $56.7 million.

Please confirm or explain why my conclusions are incorrect.

Thank you.

[redacted]

Scenario 1 - I agree this not reportable

Scenario 2 - The commitment to contribute the $80 MM in land does go to the size of the jv, so you are correct that the size of person test is satisfied. However, the only assets of the jv are the land and $ 4 MM in cash, so presumably A and B's 50% interests in the jv would be valued at $42 MM each. So the size of transaction test is not satisfied and the formation is non-reportable.

Scenario 3 - I agree that the formation is not reportable. The later contribution of land could be a reportable acquisition depending on how the deal is structured, but if it's just raw land, it's probably exempt as unproductive real property.

B. [illegible]
12/18/06