

801.2  
802.4  
7A(c)(10)

Verne, B. Michael

From: [REDACTED]  
Sent: Tuesday, May 19, 2009 4:56 PM  
To: Verne, B. Michael  
Subject: Structure of Transaction question

Dear Mike hope all is well with you I have a question about how to report a transaction.

**Facts:**

1. A is the UPE of B.
2. B will merge with and into Company with Company remaining as the surviving corporation.
3. B shareholders will receive 100% of the newly-issued Company shares of Class B Common Stock representing 72% of Company's outstanding voting securities.
4. Pre-closing Company shareholders will receive 100% of the newly-issued Company shares of Class A Common Stock representing 28% of Company's outstanding voting securities.
5. Post-closing A will hold 50% or more of Company's voting securities.

**Questions:**

1. A will submit an HSR filing in connection with its acquisition of 50% or more of Company voting securities.
2. To the extent any other B shareholder will receive Company voting securities with an aggregate value of \$65.2 million would that shareholder
  - a. Be required to submit a separate HSR filing unless otherwise exempt?
  - b. If that shareholder needs to file an HSR would 802.4 apply and the value of the Company shares only include non-exempt assets (Company assets)?
3. The C shareholders will exchange their Company shares for newly-issued shares of C voting securities
  - a. Can those shareholders rely on 7A(c)(10) because their aggregate percentage interest will be reduced even though the shares now include the assets of B?
  - b. If C shareholders need to file HSR would they use 802.4 and value of the C shares only include non-exempt assets (B assets)?
4. If none of the above are correct how should it be treated?

Many thanks as always for your guidance.

[REDACTED]

[REDACTED]

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To comply with IRS regulations, we advise you that any discussion of Federal tax issues in this e-mail was not intended or written to be used, and cannot be used by you, (i) to avoid any penalties imposed under the Internal Revenue Code or (ii) to promote, market or recommend to another party any transaction or matter addressed herein.

5/20/2009

1. Agree

2 (a) Agree

2 (b) No – the value of the Company shares is not affected by exempt assets that it holds. I assume you are trying to apply the 802.4/802.30(c) concept here. That is – any B assets held by Company are exempt with respect to the acquisition of Company shares by B shareholders. This doesn't work because 1) the shareholders other than A do not control B, so they didn't hold its assets pre-acquisition and b) this is not a formation.

3 (a) I assume Company and C are the same entity? Yes the C shareholders can rely on 7A(c)(10)

3 (b) Moot – but see 2 (b) above

I've also attached a link to a tip sheet that shows the relationship between the application of 802.4 and the size-of-transaction.

[http://www.ftc.gov/bc/hsr/802\\_4tipsheet.shtm](http://www.ftc.gov/bc/hsr/802_4tipsheet.shtm)

BW

5/20/09

K. WALSH CONCURS