

801.40
802.4

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, July 16, 2009 3:24 PM
To: Verne, B. Michael
Subject: JV question 801.40

Mike the question is whether this is a JV filing.

Facts


1. B, buyer, sets up Newco (corporation) and contributes its subsidiary B1 to Newco in exchange for 55% of the voting securities.
2. C contributes its subsidiary C1 to Newco in exchange for the remaining voting securities.

HSR

1. B contribution of B1 to Newco exempt 802.30. If the value of C1 is \$65.2 million or more an HSR filing required by B unless otherwise exempt.
2. The acquisition price for B would be limited to 55% of the value of C1.
3. C's contribution of C1 to Newco exempt 802.30. If the value of B1 is \$65.2 million or more an HSR filing required by C unless otherwise exempt.
4. The acquisition price for C would be limited to 45% of the value of B1.
5. Is this an 801.40 HSR?

Many thanks as always for your guidance,
[REDACTED]

1. If the fair market value of C1's non-exempt assets exceeds \$65.2 MM then B files.
2. The acquisition price is the fair market value of 55% of the voting securities of Newco (taking into account all of the assets – B1 and C1) held by Newco.
3. If the fair market value of B1's non-exempt assets exceeds \$65.2 MM then C files.
4. The acquisition price is the fair market value of 45% of the voting securities of Newco (taking into account all of the assets – B1 and C1) held by Newco.
5. Yes


7/16/09