

802.30

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, November 04, 2009 9:53 AM
To: Verne, B. Michael
Subject: Coverage Question

Michael,

I have been asked to confirm with the PNO that the following transaction would be considered an intraperson transaction (if not otherwise exempt) and therefore not reportable.

H is a nonprofit hospital, the sole member of which is S. S is also a nonprofit corporation, but without members. S is also the sole corporate member of F, a charitable foundation.

In the proposed transaction, H will amend its governing documents to name A, as its sole member in place of S. For purposes of this inquiry, you may assume that A is an agency of state government and that, this portion of the transaction would be definitionally exempt under Section 801.1.

Also in the proposed transaction, S and F will amend their governing documents to name H (now controlled by A) as their respective sole members. We would like to confirm that the "flip" of the relationship between S and H, and the substitution of H for S as the member of F, (to the extent not also exempt under 801.1) would be considered an intraperson transaction exempt under Section 802.30 of the Rules, notwithstanding the change of control of H.

Please let me know if you have any questions about this scenario. Thanks for your assistance.

[REDACTED]

[REDACTED]

Disclaimer Required by IRS Rules of Practice:

Any discussion of tax matters contained herein is not intended or written to be used, and cannot be used, for the purpose of avoiding any penalties that may be imposed under Federal tax laws.

This message contains information which may be confidential and privileged. Unless you are the intended addressee (or authorized to receive for the intended addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender at [REDACTED] by reply e-mail and delete the message.

Thank you very much.

I agree that A becoming the sole member of H in place of S is a non-event because there is no acquiring person in the A-H transaction. However, I'm having difficulty fitting one piece of this into the intra person exemption. Let's walk through the steps:

1) A becomes the sole member of H in place of S (non-reportable as stated above).

- At this point S has no interest in H because A can designate all of its directors as sole member, so the structure is now:

H is its own UPE and S is its own UPE and the sole member of F

2) H becomes the sole member of S.

- This is the step I'm having trouble with. In this transaction H is the acquiring person and S is the acquired person (each its own UPE), so the acquiring and acquired persons are not the same person by reason of § 801.1(b)(2). I don't see how § 802.30 can exempt this step. So now the structure looks like this:

H is its own UPE and the sole member of S, which is the sole member of F

3) H becomes the sole member of F.

- This would be exempt under § 802.30 because H is both the acquiring and acquired person (i.e., it controls F both before and after this step).

BM
11/4/09

K BUG CONCURS