

802.4

**Verne, B. Michael**

**From:** [REDACTED]  
**Sent:** Wednesday, March 17, 2010 11:06 AM  
**To:** Verne, B. Michael  
**Cc:** [REDACTED]  
**Subject:** Valuation Issues Under 802.4

Mike, we would like to get your views on certain valuation issues under a Section 802.4 analysis arising from a proposed transaction. Foreign company ("Buyer") is in discussions to acquire the voting securities of a US public company ("USCo") engaged in services activities. The size of parties is satisfied, and the value of the voting securities of USCo to be acquired is above the size of transaction threshold.

USCo has several foreign subsidiaries that, collectively, do not have US sales of more than \$63.4 million. Thus, the acquisition of the foreign subsidiaries would be exempt under Section 802.51(b). The board (or designee) of Buyer will need to make a fair market value determination of the non-exempt assets (in this fact pattern the assets of the USCo excluding its foreign subsidiaries). One of the principal assets of USCo is its servicing contracts. These contracts may be with a US company or non-US company, and certain of the services are provided outside the United States at the foreign entities or subsidiaries of the customer. This has raised the following valuation issues under a Section 802.4 analysis:

1. With respect to the contracts of USCo where the services are provided to a customer site outside of the United States, can Buyer consider that portion of the contract (and corresponding revenues) for services provided outside the United States as an HSR exempt asset.
2. Alternatively, if Buyer were to make the fair market value determination of the non-exempt US contracts based on the percentage of the US revenues and non-US revenues of USCo, can the revenue from the contracts of USCo for services provided to customers outside the United States be considered foreign revenue for purposes of this percentage allocation.
3. If the deal was structured as an asset deal, we understand (but would appreciate if you could confirm) that Buyer would value the contracts of USCo based on the premium, if any, it would pay for these contracts. Given that the transaction is structured as the acquisition of the voting securities of USCo but the fair market value determination under Section 802.4 requires Buyer to value the contracts of USCo, we wanted to confirm that Buyer could value these contracts on the same basis, that is, the premium it is paying for these contracts.

Please let us know if you have any questions concerning the fact pattern presented. Thanks in advance for your consideration.

Regards,

[REDACTED]

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To ensure compliance with requirements imposed by the IRS, [REDACTED] informs you that, if any advice concerning one or more U.S. Federal tax issues is contained in this communication

3/17/2010

First – 802.4 is an asset based test, so you can't use 802.51 to exempt the foreign subs outright. If the foreign subs have any US assets they would have to be valued along with the US assets of USCo.

1. Contracts for services provided outside of the US are foreign assets

2. The determination hinges on where the services under each contract are provided. I assume you are asking this question because some of the contracts cover both services provided in the US and outside of the US. If that is the case, revenue allocation is a reasonable way to determine what portion of a contract is US and what portion is foreign.

3. I think this is reasonable. The fair market value of the contracts is what would be paid for them in a arms length asset acquisition.

B  
3/17/00