

802.10
802.30

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, January 06, 2010 5:37 PM
To: Verne, B. Michael
Subject: HSR Question

Mike,

First, happy new year!

Second, I've been puzzling over a fact pattern that I need your advice about. Here it is:

A has a 49% membership interest in an existing LLC, in which B has a 51% interest. A and B want to contribute additional assets to the LLC and, in the process, convert it from an LLC to a corporation. For tax reasons, the events are sequenced as follows:

(1) B contributes additional assets and increases its membership interests from 51% to 64%.

(2) The LLC is converted to a corporation; A receives 36% of the voting securities and B receives 64% of the voting securities. A's 36% of the stock is worth less than \$50 million (as adjusted) and B's 64% is worth more than \$50 million (as adjusted).

(3) A contributes additional assets and receives additional voting securities so that each of A and B has 50% of the new corporation. The value of the new corporation is high enough that 50% of the voting securities are worth more than \$50 million (as adjusted).

It seems to me that step (3) requires a filing by A in that A will acquire voting securities worth more than \$50 million (as adjusted) and the transaction is not exempt under 802.10.

What I'm not sure about is whether in step (2) B is required to file when it acquires 64% of the voting securities of the converted LLC. It seems to me ought to be exempt under 802.30 or perhaps 802.10, but Example 3 to 802.10 suggests it may not be. What do you think?

Please give me a call if you want to discuss.

Thanks for your help.

Best,



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I would look at the steps sequentially and analyze which are reportable.

1) non-reportable – B already controls LLC so its increase from 51% to 64% is exempted by § 802.30. A does not control LLC, so it does not have a filing as an acquiring person for the new assets B is contributing to LLC.

2) non-reportable – the earlier contribution of assets is not considered when the LLC is converted to a corporation. Since both A and B are receiving voting securities pro rata to the interests they hold in the LLC, this step is exempt under § 802.10.

3) Agree – A has a filing in its acquisition of voting securities of the new corporation. B may also have a reportable acquisition if the assets contributed by A are valued at more than \$50 million (as adjusted), since it controls the corporation prior to the contribution of the assets.

BM
1/7/15