

Verne, B. Michael

From: [REDACTED]
Sent: Friday, September 16, 2011 5:20 PM
To: Verne, B. Michael
Subject: RE: 801.30 Inquiry

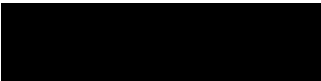
Mike:

Thanks again for your earlier response. The parties are considering (for tax reasons) a somewhat different structure.

In this alternative model, Issuer's shareholders will still be the current shareholders of Corporation A, the limited partners of Partnership X (which is controlled by Corporation A), and the shareholders of Corporation B. The shareholders of Corporation A and Corporation B will still contribute their shares, and the limited partners of Partnership X will still contribute their interests, in exchange for shares of Issuer. The difference is that instead of buying the shares of Issuer from Issuer's shareholders, Buyer will buy from Issuer the shares of Corporation A and Corporation B and the limited partnership interests of Partnership X that Issuer's shareholders had contributed.

Technically this does not seem to be an 801.30 transaction because Buyer would be acquiring the voting securities and noncorporate interests from an entity (Issuer) that is included within the same person (Issuer) as A, B, and X (all wholly owned by Issuer as of immediately before Closing). May the parties nevertheless treat this as an 801.30 transaction? We note that if the parties were to skip the Issuer-formation stage altogether, then Buyer would be acquiring shares of A and the noncorporate interests of X from holders not included in the same person as A (which is its own UPE) and X (which is controlled by A). Consequently, it seems that we could give notice to A (as described below), but with an explanation (as you recommended).

(For completeness, if the Issuer-formation stage were skipped, the acquisition of shares of B would be from an individual who holds 100% of the voting securities of B, but that transaction would not be reportable for size-of-transaction reasons.)



THE CHANGE IN STRUCTURE HAD TAKEN THIS OUT OF 801.30. YOU CAN FILE ON THE AGREEMENTS WITH THE SHAREHOLDERS OF A / B. EITHER CAN FILE ON BEHALF OF ISSUER

From: Verne, B. Michael [mailto:MVERNE@ftc.gov]
Sent: Tuesday, September 13, 2011 11:57 AM
To: [REDACTED]
Subject: RE: 801.30 Inquiry

B
9/20/11

I agree that 801.30(a)(5) would apply and that the entities you propose to notify will work. You may want to provide a brief explanation in Item 3.

From: [REDACTED]
Sent: Tuesday, September 13, 2011 12:36 PM
To: Verne, B. Michael
Subject: 801.30 Inquiry

Dear Mike:

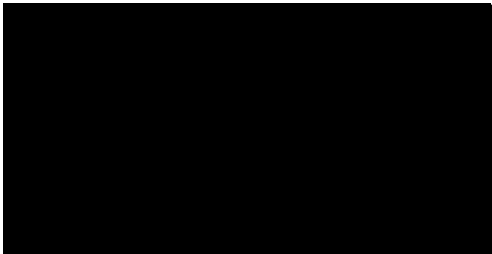
Thanks for the program yesterday afternoon. It was quite helpful. I have a question, though, that does not relate to the new form -- it is an 801.30 question.

We represent Buyer. Buyer intends to buy 100% of the voting securities of Issuer. Buyer's acquisition of those securities will be a reportable transaction. Issuer has not yet been formed, but it will be formed if a favorable tax determination is received from the IRS. When formed, Issuer will be its own UPE.

Issuer's shareholders will be the shareholders of Corporation A, the limited partners of Partnership X (which is controlled by Corporation A), and the shareholders of Corporation B. The shareholders of Corporation A and Corporation B will contribute their shares, and the limited partners of Partnership X will contribute their interests, in exchange for shares of Issuer. The formation of Issuer appears to be the formation of a joint venture corporation under 801.40, but it will not produce a reportable acquisition, because no person will acquire \$66 million worth of voting securities.

Buyer has negotiated a purchase agreement with the primary shareholders of Corporations A and B. Some of the shareholders have signed the purchase agreement. Others have signed a letter of intent in which they and Buyer agree to sign the purchase agreement after the tax determination is received.

Although the transaction has been negotiated, we believe that it is covered under 801.30(a)(5) ("All acquisitions (other than mergers and consolidations) in which voting securities or non-corporate interests are to be acquired from a holder or holders other than the issuer or unincorporated entity or an entity included within the same person as the issuer or unincorporated entity") and that the parties should accordingly follow the procedures under 803.5(a). Assuming that the Buyer is prepared to execute the 803.5(a)(2) affidavit, we believe that it could provide notice and proceed with its filing today, but to whom should it provide notice, given that the Issuer has not yet been formed? We think that Buyer should send the notice to the corporate headquarters of Corporation A, Corporation B and Partnership X. Do you agree?



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