

7A(C)(3)

Verne Michael

From: [REDACTED]
Sent: Friday, January 16, 2004 9:45 AM
To: Verne Michael
Subject: Look Through question

Mike - I called but got voice mail, and thought I'd send a note instead. My question is whether I would be able to "look through" the Special Purpose Entities in the situation below so that the transaction would be deemed intraperson exempt?

X has a subsidiary, X-Sub, that X controls by holding 50%+ of the voting securities.

Y holds shares of X-sub, through two Special Purpose Entities whose only assets are the shares of X-Sub.

X wants to acquire shares of X-Sub held by Y's two Special Purpose Entities. The voting securities of the two Special Purpose Entities are worth over \$50 million.

X has another sub, X-LLC. Y's two Special Purpose Entities will be merged into X-LLC, so I think X (the UPE) will be deemed to have acquired the shares of the two Special Purpose Entities from Y. [Note: Y will acquire shares of the UPE X in this transaction. I know I will need to analyze Y's acquisition of shares of X]

Thus, the question: the two SPEs only assets / holdings are the voting securities of X-Sub. X could acquire the shares of X-Sub held by the two SPEs without filing, because that would be 802.30 exempt (and also under the Act) as X already holds 50% or more of X-Sub's voting securities. Logically, it seems like X should be able to "look through" the two SPEs and get intraperson treatment since it could directly acquire those shares, so long as the two SPEs are just shells whose only holdings are the shares of X-Sub, but I'm not sure if logic would fit within the rules.

Any thoughts?

Thanks,

[REDACTED] THE SPEs ARE HELD 100% BY Y, SO FOR HER PURPOSES Y DIRECTLY HOLDS THE VLS OF X-SUB.

ADVISED THAT THIS IS EXEMPT UNDER 7A(C)(3) AS LONG AS THE SPE'S HAVE NO OTHER HOLDINGS.

B. Michael
1/16/04

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