

802.3
802.4

Verne, B. Michael

From: [REDACTED]
Sent: Monday, July 11, 2005 2:29 PM
To: Verne, B. Michael
Subject: RE: Question(s)

Thanks. Do you also agree with me that, when analyzing the acquisitions of the two subsidiaries under 802.4(a), you get only one combined \$500 million test under 802.3 for the O&G assets of both companies (but excluding the O&G assets held by the "target" of the secondary acquisition)? Thus, if B and C together hold O&G reserves and related assets with a combined FMV of more than \$500 million (again, excluding the value of any O&G assets of the unaffiliated company), the primary transaction is reportable, regardless of whether one of them has more than \$500 million worth, or only combined do they have more than \$500 million worth).

AGREE

[REDACTED]

-----Original Message-----

From: Verne, B. Michael [mailto:MVERNE@ftc.gov]
Sent: Monday, July 11, 2005 1:39 PM
To: [REDACTED]
Subject: RE: Question(s)

Sorry - I got bogged down on some other issues this morning. I agree with your analysis of this transaction.

-----Original Message-----

From: [REDACTED]
Sent: Monday, July 11, 2005 7:49 AM
To: Verne, B. Michael
Subject: Question(s)

I need some help in puzzling this one through.

Buyer will acquire all the stock of Company A, which has two wholly-owned subsidiaries, B and C (and nothing else). Acquisition price exceeds \$500 million.

B is an oil and gas company that holds reserves and associated exploration and production assets.

C's sole asset is a large minority holding (in the range of 35%) of the stock of an otherwise unaffiliated company that also holds oil and reserves and associated assets.

It seems pretty clear to me that, because C doesn't "hold" the oil and gas assets of the otherwise unaffiliated company, Buyer applies 802.3(a)

to the assets of B (only), to determine whether that exemption applies (to the acquisition of A).

Buyer's indirect acquisition of the stock of C gives rise to a potentially reportable secondary acquisition of C's minority holding in the otherwise unaffiliated company. Because we have a different acquired person, I can apply 802.3 again, to determine whether the unaffiliated company holds less than \$500 million worth of oil and gas assets (which become exempt) and therefore whether the secondary acquisition may be exempt as a result of 802.4(a).

Let's suppose that the secondary acquisition is exempt, that B has exempt oil and gas assets valued at less than \$500 million, and that the acquisition of B by itself would be exempt under 802.4(a) because B doesn't hold more than \$53.1 million worth of other non-exempt assets. I still need to figure out whether the "primary" acquisition of the stock of A is reportable. Suppose that Buyer is paying more than \$53.1 million for the stock of C. Does the fact that the secondary acquisition is exempt make the primary acquisition of the stock of that subsidiary exempt as well? Does it matter whether B holds any non-exempt assets or what their value is? Do I have to value the stock of C? Does it matter whether C holds non-exempt assets? Help(!)

Here's my tentative answer: Buyer applies the 802.3 exemption to the assets of B, eliminating B's exempt assets if the exemption applies. If B has any non-exempt assets, they count against a \$53.1 million filing trigger. If B holds more than \$53.1 million of non-exempt assets, the entire transaction is reportable. If B holds less than \$53.1 million worth of non-exempt assets, we go to the next step.

The secondary acquisition is either reportable or non-reportable, and that question by itself doesn't figure directly into the analysis of whether the primary transaction is reportable.

Back to the primary transaction. Buyer's acquisition of the stock of A is an indirect acquisition of the stock of C. If C's only assets are its minority holding of the stock of the unaffiliated company, then C does not hold any "non-exempt" assets and the reportability of the acquisition of the stock of A turns on the analysis (above) relating to the indirect acquisition of the stock of B. Or if C does hold some non-exempt assets, their fair market value would be added to the fair market value of the non-exempt assets held by B. If the combined fair market value of the non-exempt assets of B and C is less than \$53.1 million, then the acquisition of the stock of A is exempt under 802.3(a). Otherwise reportable.

AGREE -
B. Michael
7/11/05

_____ made the following annotations.

