

802.4

Verne, B. Michael

From: [REDACTED]
Sent: Friday, November 17, 2006 4:06 PM
To: Verne, B. Michael
Subject: Application of section 802.4

Mike:

I would appreciate your comments on the application of section 802.4 in the following transaction.

A Corp., a foreign person with substantial sales and operations in the United States, is paying \$60 million for all of the outstanding voting securities of B Corp., a United States issuer which has operations and assets in both the United States and Europe. It is my understanding that under sections 802.4 and 802.50(a), the fair market value of the European assets of B is deducted from the 460 million price in applying the Size of the Transaction Test, provided that any sales in or into the United States from B's European assets were less than \$56.7 million during B's most recent fiscal year. This seems to be the import of Example 2 to 802.4 and Informal Staff Opinion 0601024.

Please advise if my understanding is incorrect.

Thank you for your assistance.

[REDACTED]

Correct.
B. Michael
11/17/06

The value of the foreign assets is not deducted from the size-of-transaction. That value does not count toward the value of non-exempt assets in 802.4. If the foreign assets would be exempt under 802.50, and the remaining US assets do not exceed \$56.7 MM in value, then the transaction is exempt under 802.4 even though the size-of-transaction is \$60 MM.