

802.50
802.4

Verne, B. Michael

From: [REDACTED]
Sent: Sunday, March 04, 2007 1:58 PM
To: Verne, B. Michael
Subject: Overview of facts to determine filing obligation

Mike,

Subsequent to my voicemail, I realized that we have given you piecemeal information regarding the clients' proposed transaction, so I wanted to lay out the facts in one email:

1. The Ultimate Parent company of the acquirer and the acquiror each have a principle place of business in the US and thus are considered US persons; both are in the large cruise ship business.
2. The entity being bought via an acquisition of its voting securities, is a Bahamian corporation and its main assets are 3 vessels are motor yachts that conduct luxury, specialty sailing voyages. Passenger capacity on two of the vessels is 148 persons and for the third vessel capacity is 312 persons. It is estimated that on average last year 80-85% of passengers on all voyages were US citizens.
3. The majority of voyages taken by the 3 vessels are in the Mediterranean and Caribbean, with 36 trips last year into or out of the US Virgin Islands.
4. Total US source revenue booked either directly or through US travel agents is approximately \$45.6 million.

It would seem that if I view the vessels as moveable assets, for which I must examine the nexus to US commerce, the US source revenue numbers show an amount of approximately \$45.6, that is significantly below the HSR filing threshold. Further, if I look at the nexus to the US with regard to the additional facts I have (a) the majority of time spent in US ports as quite small (36 times during the last fiscal year; all 3 vessels are almost always in operation throughout the year); (b) 80-85% of the passengers as US, however the number of US passengers in the aggregate is quite small given the limit of 148 and 312 passengers per voyage depending on the vessel, and (c) the US passengers are involved in voyages that are mostly outside the US. Based on the totality of the facts, I would tend to view the assets as being more akin to foreign assets, but there seemed to be a feeling on last week's call that you viewed the fact that 80-85% of the passengers were US citizens as dispositive of the issue that the assets should be viewed as US assets. However, I was not so sure that you were that definitive in your statements and wanted to give you a cohesive overview. Please let me know if after reviewing the facts above, it is the FTC's view that the assets should be considered US assets or foreign assets, and if the assets are considered US assets whether the percentage of US passengers is the critical fact in determining the status of the assets. Thank you.

I'm assuming that if 80% of the passengers are U.S., then a majority of the revenues are attributable to U.S. customers? If so, I think that is dispositive in determining that the ships are U.S. assets. Is this true of all three vessels? If you analyze each ship on a stand-alone basis and determine that one has less than 50% US revenues, then you can apply 802.4 to the transaction. If the value of the remaining two US ships is less than \$59.8 MM, then the acquisition of the voting securities is exempt. If all three are US, there is no exemption available despite the fact that US sales are only \$45.6 MM

Bruce
3/4/07