

802.4
802.50

Verne, B. Michael

From: [REDACTED]
Sent: Monday, April 23, 2007 3:47 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Confirmation of 802.4 discussion

Mike,

I am writing to memorialize our telephone conversation of this morning. The facts we discussed are as follows:

We are representing Company A that is acquiring membership interests in Company B and voting securities of Company C. Companies B and C have the same ultimate parent entities. Company B is a U.S. LLC holding more than \$59.8 million in non-exempt U.S. assets. Company C has its headquarters in the U.S. but has no U.S. sales and its U.S. assets, if any, would be less than \$59.8 million.

802.4(b) provides that "the assets of all issuers and unincorporated entities that are being acquired from the same acquired person are included in determining whether the limitation for non-exempt assets is exceeded."

You stated that when applying 802.4 and 802.50 to the acquisition of multiple entities with foreign and U.S. assets from the same UPE(s) that the foreign assets of all issuers must be aggregated and the U.S. assets of all issuers must be aggregated in order to determine the amount of non-exempt assets to be acquired. Even though the foreign assets to be acquired (in this case, held entirely by Company C) did not generate in excess of \$59.8 million in their most recent fiscal year, the acquisitions of both Company B and Company C are reportable because Company B alone (by virtue of its holdings of U.S. assets) exceeds the threshold for non-exempt assets. In other words, the reference to non-exempt assets in 802.4(b) relates to the limitation on non-exempt assets in 802.4 (a), and not to the limitations, for example, in 802.50.

Please let me know if any of the above is incorrect. Again, many thanks for your kind and quick help.

Best Regards,

[REDACTED]

AGREE
B
4/23/07

[REDACTED]

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