

Verne, B. Michael

802.4

From: [REDACTED]
Sent: Wednesday, June 27, 2007 2:59 PM
To: Verne, B. Michael
Subject: LLC Formation Question

Dear Mike:

I have a question in the context of the formation of an LLC. In my view, no HSR filing is required in the following circumstance.

Facts:

"A" and "B" form a 50/50 joint venture LLC. They each commit to contribute \$60.2 million to the venture. "A"'s contribution consists entirely of cash. "B"'s contribution consists of barges, to be used by the LLC in its ordinary course of business. B contributes (i) slightly used barges valued at \$58.3 million and (ii) contracts for the delivery by the manufacturer of brand new barges to the LLC valued at \$2.5 million.

Analysis:

"A" and "B" are both acquiring persons, 801.50(a). As each acquires a controlling (50%) non-corporate interest valued at more than \$59.7 million, "A" and "B" must determine if the exemption in 802.4 is applicable to their acquisitions.

(1) In the case of "B", the barges are exempt as intra-person transfers, 802.30(c). The cash contributed by "A" is exempt under 801.21(a). As a result, from "B"'s point of view, the LLC does not hold non-exempt assets with an aggregate fair market value of more than \$59.7 million. (In fact, all of the LLC's assets are exempt.) No filing is required for "B".

(2) In the case of "A", the cash contributed by "A" is exempt under 801.21(a). As "A" cannot avail itself of 802.30(c) with respect to the barges, the question whether the barges are exempt assets turns on 802.1. For purposes of this analysis, let's assume that the "used" barges are not exempt assets under 802.1(d). However, the contracts to acquire new barges, in my view, come under 802.1(b). As a result, the non-exempt assets are valued at \$58.3 million, which is below the \$59.7 million filing threshold. No filing is required for "A".

Please let me know if you agree with this assessment, in particular the treatment of the contracts to acquire new barges as exempt under 802.1(b).

Best regards,
[REDACTED]

AGREE -
B
6/27/07