

802.4

Verne, B. Michael

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From: [REDACTED]  
Sent: Thursday, September 24, 2009 11:51 AM  
To: Verne, B. Michael  
Subject: Section 802.4

Mike,

I'm working on a transaction with a contingent payment. Our client, the acquiring person, is currently valuing the contingent payment to determine the acquisition price and whether the transaction meets the size-of-transaction threshold.

I am also considering whether the transaction may be exempt pursuant to Section 802.4 in the event size-of-transaction is satisfied.

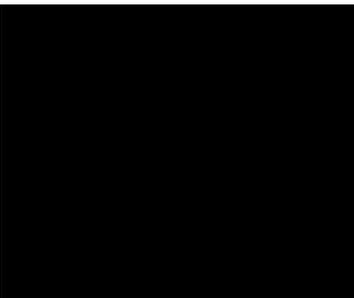
On its most recent regularly prepared balance sheet, the acquired person lists total assets of \$39 million. Of this amount, \$25.8 million is accounts receivable. The target provides engineering consulting services and is not involved in retail lending or financial services.

I understand that Interpretation #7 of the Fourth Edition of the PNO Manual states that, "But transfer of such receivables in the context of an acquisition of a retail lending company...or of substantially all of the assets of another entity, would not be in the ordinary course (and therefore not exempt) under Section 802.1(a)." (Emphasis mine)

Does the language I've underlined mean that receivables would not be exempt in asset deals involving substantially all the assets of the seller, but that, so long as the target is not involved in financial services, they would be exempt under a stock deal?

We understand that our client would need to conduct a fair market valuation of the remaining non-exempt assets in order to determine whether the transaction is actually Section 802.4 exempt, but if the \$25.8 million is exempt, it's very unlikely the value of the remaining non-exempt assets would exceed \$65.2 million. Could you let me know whether I'm analyzing this correctly? Of course, please feel free to give me a call if you have any questions.

Many thanks and best regards,



THE ACCOUNTS RECEIVABLE  
WOULD NOT BE EXEMPT IN  
EVEN AN ASSET OR V/S DEAL.

A handwritten signature in blue ink, appearing to be 'D'.

10/7/09