

802.2(d)

Verne, B. Michael

From: [Redacted]
Sent: Monday, November 02, 2009 8:14 AM
To: Verne, B. Michael
Subject: Assisted Living Facilities

Mike,

I have reviewed a number of informal opinions involving the purchase of assisted living facility assets, and wanted to get your view as to whether I am viewing the exempt and non-exempt portion of these assets properly.

First, as to the exemption, assisted living facilities, as opposed to nursing homes, are considered residential property, and are thus exempt under 802.(d)(ii). Common areas (802.2(d)(2)(iii)) and assets incidental to ownership of such property (802.2(d)(2)(iv)) are also exempt. It follows that services routinely offered to facility residents would not be considered separate businesses under 802.2(d) but would instead be exempt under 802.2(d)(2)(iv). Thus, assets related to providing the following services would be exempt: meals, cable TV, and housekeeping. See informal opinion 0709019. Common areas such as dining rooms/cafeterias, recreation rooms, lobbies and exercise facilities would also be exempt under 802.2(d)(2)(iii). See id. In addition, certain states require that a registered nurse be on duty at all times to supervise assistance with daily living, the administration of medication, and emergency responses. Such services, as opposed to having a skilled nursing facility on site, is also exempt. See informal opinion 0006018. Also exempt are assets relating to the provision of other services such as assistance for bathing and dressing, recreation activities and meal services. See informal opinion 9911007. Finally, services provided for the comfort and safety of patients with Alzheimer's disease are exempt. See informal opinion 0409002.

Assets attributable to on site medical facilities and skilled nursing facilities are not exempt. See informal opinion 0006018. In addition, certain separate businesses are not considered assets incidental to ownership of the residential property under 802.2(d)(2)(iv) and must be valued as non-exempt businesses under 802.2(d)(3). These include on-site barber shops/hairdressers and pharmacies. See informal opinions 0709019 and 9911007. With respect to these non-exempt assets, they must only be valued if they are controlled by the entities or facilities being acquired. In that case both the business/assets related to providing the services and the square footage of the property devoted to providing the services must be valued as non-exempt. However, where the services are not controlled by the facilities or entities being acquired, but instead are provided by third parties through a contract and lease of the facilities space, the assets relating to providing those services need not be valued. Instead, these activities are exempt under 802.5 as acquisitions of investment rental property, as long as the buyer intends to continue to have third parties provide these services through a lease of the space. I have not seen this last point in the informal letters, but believe it follows from 802.5.

Please let me know if you agree.

AGREE
B
11/2/09

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