

Verne, B. Michael

802.5

From: [REDACTED]
Sent: Tuesday, April 02, 2013 6:04 PM
To: Verne, B. Michael
Subject: Question regarding 802.5

Hello Mike,

Hope all is well. I have some questions regarding 802.5 and the sale of skilled nursing facilities (nursing homes), assuming the value exceeds the threshold and the size of person tests are satisfied.

I understand that the acquisition of nursing homes is not exempt under 802.2(d) (e.g., as stated in informal opinion 190 in the 4th ed of the Premerger Notification Practice Manual).

1. Can you confirm that such a sale can be exempt, however, if the buyer intends to buy the facilities and thereafter lease the facilities to a 3rd party that will operate/run them as nursing homes or rehabilitation therapy facilities? (Does Informal Staff Opinion 0502004 still represent the current PNO view)?
2. Generally regarding 802.5 (noting Informal Staff Opinion 0803001 answer) is the availability of the 802.5 exemption contingent on whether the business (e.g., group of nursing homes) to be sold is already owned by the seller and rented by the seller to a third party or is it enough that the buyer intends to rent to a third party?
3. Is there a difference in the exemption result if the seller currently leases (does not own) the facilities and operates them as nursing homes and is selling that lease to a buyer who will lease to a third party?

Thanks very much.

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There is a two-pronged test for the 802.5 exemption:

1. The property must be **currently** rented or currently held for rent but not rented; and
2. The acquiring person must **intend to rent** the property to an entity not within its person who will operate it (otherwise it would not be an ordinary course investment)

So if the seller currently rents the property to a third party who operates it and the buyer intends to continue to rent the property to an entity it does not control (even the current renter), the exemption applies. If the seller currently owns the property and operates it itself, the exemption does not apply, even if the buyer intends to rent it to a third party operator.

The exemption also does not apply if the seller currently leases the property from a third party and operates it and is selling the lease to a buyer who will sublease (?) it to another entity to operate it.

If, however, the buyer is acquiring the property from the current owner who is leasing it to an operator, the exemption would apply even if the buyer will continue to lease it to the current operator (as long as the buyer does not control the current operator).


4/3/13

KW concurs