

Verne, B. Michael

801-30

From: [REDACTED]
Sent: Wednesday, April 09, 2014 8:45 AM
To: Verne, B. Michael; Walsh, Kathryn
Subject: Waiting Period - TO and an agreement (801.30(a)(5))

Hi guys,

Hope you get to enjoy some of this great weather! This is probably a very simple question but I can't find the answer in this transaction the acquiring person is making a tender offer all cash to acquire approximately 80% of the target. At the same time the acquiring person is entering into an agreement to acquire Preferred Stock (also voting). The value of the preferred barely trips the HSR filing threshold. The acquiring and acquired persons are the same in both. I know if you have a TO you must file as a TO and since the TO will give the acquiring person control of the target I would assume the acquisition under the agreement would be exempt under 802.30. But I have a vague recollection that in this situation (TO plus 801.30(a)(5)) you would have two waiting periods, one for the TO and one for the 801.30(a)(5). I assume one filing, one filing fee (aggregate value falls into the \$125,000 filing fee) and the description of the transaction would describe both acquisitions.

Questions:

1. Are there two separate waiting periods?
2. Is #1 is correct and the acquiring person withdrew and refiled would waiting period be extended 15 or 30 days?
3. Please confirm just one filing, filing fee and we should describe both in 3(a).
4. Should the description say the acquisition of the Preferred would be exempt under 802.30? Of course only if it follows the TO.

I don't know if it is Spring fever or what but lately it seems that I find very basic questions incredibly difficult. Maybe it is time for vacation...

As always many thanks,



To comply with IRS regulations, we advise you that any discussion of Federal tax issues in this e-mail was not intended or written to be used, and cannot be used by you, (i) to avoid any penalties imposed under the Internal Revenue Code or (ii) to promote, market or recommend to another party any transaction or matter addressed herein.

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

1. If the CTO is for 50% or more, only one 15 day waiting period
2. 15 days
3. One filing, one filing fee (based on the total value of the 80% tendered plus the preferred voting), describe both acquisitions in 3(a)
4. No – the preferred is not exempt, it is aggregated with the CTO

*BMW
9/9/14
FW concerns*