

802.50
802.4

Verne, B. Michael

From: [REDACTED]
Sent: Monday, June 09, 2014 4:34 PM
To: Verne, B. Michael; Walsh, Kathryn E.
Subject: JV Formation/Acquisition -- 802.50 Exemption

Hi, Mike and Kate ~

Hope you're both doing well. We're hoping you will be able to clarify how the PNO would evaluate sales generated by certain foreign assets for purposes of an 802.50 analysis.

Under 802.50, the acquisition of assets located outside the United States is exempt from HSR requirements unless the foreign assets the acquiring person would hold as a result of the acquisition generated sales in or into the U.S. exceeding \$75.9 million during the acquired person's most recent fiscal year.

As part of a proposed joint venture (JV) formation, foreign assets will be contributed to a newly-formed foreign LLC. While 802.50 and 802.51 would not be directly applicable to the corresponding acquisition of non-corporate interest in the JV by the contributors (since they pertain only to foreign voting securities), any foreign assets held by the JV that would be exempt if acquired directly could result in an exempt transaction via 802.4. Our requests for clarification are as follows:

1. **In valuing the foreign assets, would it be necessary to include the U.S. sales generated by the contributed assets prior to their contribution (i.e., when the assets were still held by the contributors directly)?** As a newly formed foreign JV entity with no sales at the time of formation, the foreign assets held by the JV would presumably not be considered to have generated any U.S. revenues for purposes of an 802.50 exemption analysis. We expect that it is not necessary to look to the sales generated by such assets prior to the time they were contributed to the JV because the JV entity itself would be the acquired person in a formation, but just wanted to confirm that you agree.
2. **With regard to subsequent acquisitions of interests in that same JV following formation, however, the acquired persons would be the JV's two UPEs (each with a 50% interest). These two UPEs would be the original contributors of the foreign assets in question and thus the foreign assets contributed by each acquired person would have been held by each respective acquired person during its most recent fiscal year (but prior to such assets being contributed to the JV). With respect to such subsequent acquisitions of the JV interests, would we need to consider any U.S. sales generated by the foreign assets held by the JV prior to their contribution?**

Any assistance you can provide regarding the above is much appreciated.

Thanks very much,
[REDACTED]
[REDACTED]

If the assets being contributed to the JV constitute substantially all of the assets of an operating unit as defined in §802.1(a) or an entire legal entity is being contributed, the sales of those assets/entities for the last fiscal year are attributed to the JV for purposes of §802.50/§802.4. If it is just standalone assets that don't fall into this category, any sales from the last fiscal year are not counted. We think what you are asking in question #2 is how do you determine sales into the US if another party makes an acquisition of interests in the JV after its formation. The answer would be that you would look at sales into the US in the last fiscal year for all foreign assets held by the JV at the time of the acquisition. Note that this would only be an issue if the third party acquired a 50% or greater interests since this is a non-corporate JV.

Brw✓
6/10/17

KW CONCURS