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November 11, 1998

Mr. Joseph G. Krauss
Assistant Director,
Premerger Notification Office
Bureau of Competition, Rm. 301
Federal Trade Commission
Washington, DC 20580

Re: Formal Interpretation No. 15

Dear Mr. Krauss:

This responds to the Federal Trade Commission's request for comments on whether compliance with Formal Interpretation No. 15 is likely to impose undue burden on any party or class of parties. There appear to be two types of burdens that could become undue. The first arises from the uncertainties incident to the PNO's reliance here upon an "interpretation" instead of formulating a rule that specifically addresses all relevant aspects of the formation of LLCs, and the acquisition of interests in existing LLCs. This would avoid the ambiguities inherent in attempting to adapt to LLCs portions of existing Rule 801.40, which specifically addresses only the formation of corporations. The ensuing uncertainties would necessarily burden all who are confused, as well as the PNO staff.

A second source of undue burden would arise if significant existing exemptions for asset acquisitions were found inapplicable to LLC transactions even though the rationale for those exemptions should be applied as well to acquisitions under Interpretation No. 15. In this connection, while "the principles embodied in § 801.40" are said to be "applicable" to the formation of LLCs, it is uncertain whether exemptions applicable to transactions under that Rule apply also to the formation of LLCs. For example, section 802.50(a) permits a United States person to acquire foreign assets of any value provided that sales in or into the U.S., attributable to those assets during the acquired person's most recent fiscal year, did not aggregate at least $25 million. This could be read to permit the formation of an LLC, controlled by A and B, into which each contributes a separately operated foreign business. It is not entirely clear, however, whether the sales in or into the U.S. of each such business would be separately counted, with each, for example, having such sales of $20 million, which would require treating the formation as involving two acquisitions, A's acquisition of B's business and B's acquisition of A's business; or, in contrast, whether the sales volumes of each business would be combined, thus aggregating sales in or into the U.S. of $40 million.

The same uncertainty inheres in the more important exemption, section 802.20, for Minimum Dollar Value transactions. Assume that an LLC is formed to receive separate businesses from each of A and B, each to have a 50% interest in the LLC; that each business is 15% of each contributor's total assets of $90 million; and hence that the value of each such business is $13.5 million. Here, too, the exemption's availability depends on whether each contributing person holds only the assets contributed by the other person, which is only $13.5 million; or whether, as an incident of controlling the LLC, each would hold assets of $27 million.

The avoidance of the foregoing source of undue burden turns on whether the existing exemptions, in their present form or, if necessary, as revised, will be available for LLC transactions.

An even more important way of avoiding undue burden, not only for LLC transactions but for all others, would be to raise the size of person and size of transaction dollar levels to reflect inflation over the past 22 years. The attached document shows, using the Consumer Price Index, that it would require nearly $43 million today to match the purchasing power of $15 million in 1976.

Respectfully submitted,

James O'M. Tingle

James O.M' Tingle

<u>Attach.</u>

12857570.

WOODROW FEDERAL RESERVE BANK OF MINNEAPOLIS

SEARCH

What is a dollar worth?*

The Consumer Price Index (CPI) is the ratio of the value of a basket of goods in the current year to the value of that same basket of goods in an earlier year. It measures the average level of prices of the goods and services typically consumed by an urban American family. *Parkin, 1990*

Consumer Price Index and Inflation Rates, 1913-
Bureau of Labor Statistics -- regional and commodity/service group indexes
How the CPI is used to make these calculations

Directions: Enter years as 4 digits (ie 1998). Enter dollar amount without commas or $ sign in box on first line. Click Calculate button to compute dollar amount shown on second line.

If in [1976] (year) I bought goods or services for $[15000000]
in [1998] (year) the same goods or services would cost $[42943760.98]

Reset

Notes:

- Limited to years from 1913 to 1998.
- Data from consumer price indexes for all major expenditure class items.
- Base year is chained; 1982-1984 = 100
- The calculator does not work well in Windows 3.x or earlier Windows releases.
- JavaScript-enabled browsers only; Netscape version 2.0 or higher provides the best results.

How the CPI is used to make these calculations.

- What would an item or service purchased in 1998 be worth in 19?? dollars?

Example: The CPI is used to calculate how prices have changed over the years. Let's say you have $7 in your pocket to purchase some goods and services today. How much money would you have needed in 1950 to buy the same amount of goods and services?
The CPI for 1950 = 24.1
The CPI for 1998 = 162.9 (estimate based on the first 4 months of 1998)
Use the following formula to compute the calculation:
1950 Price = 1998 Price * (1950 CPI / 1998 CPI)
$7.00 x 24.1 / 162.9 = $1.03

- What would an item or service purchased in 19?? be worth in 1998 dollars?

Example: Let's say your parents told you that in 1950 a movie cost 25 cents. How could you tell if movies have increased in price faster or slower than most goods and services? To convert that price into today's dollars, use the CPI.
The CPI for 1950 = 24.1
The CPI for 1998 = 162.9 (estimate based on the first 4 months of 1998)
A movie in 1950 = $0.25
Use the following formula to compute the calculation:

1998 Price = 1950 Price * (1998 CPI / 1950 CPI)
$0.25 x 162.9 / 24.1 = $1.69

A full price movie at a Minneapolis theater costs between $5.00 and $7.00. Looks like movies have increased in price faster than most other goods and services.

*"What is a Dollar Worth" was chosen as a selection for the Scout Report (November 28, 1997), a weekly collection of useful Internet sites for discerning Internauts. The Scout Report is a publication of the Internet Scout Project, based at the University of Wisconsin - Madison.

Comments to Rob Grunewald (webmaster@res.mpls.frb.fed.us)

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