

7A(C)10
802.30

From: [Redacted]
To: mike.verne <mverne@nc.gov>
Date: 11/29/01 1:26PM
Subject: Hypothetical

Further to my voice mail message, this email describes the transaction that I would like to discuss. All steps will happen on the same day and are conditioned upon each other. In a nutshell, various shareholders of "A" are contributing certain stock of A to NewA in exchange for NewA stock; A then will be merged into NewA. Finally, one shareholder of A will contribute to NewA (1) cash; (2) debt securities of an A subsidiary; and (3) the voting securities of a subsidiary whose only asset is debt of another A subsidiary.

I know that this would be analyzed as the merger of A into NewA if the various A shareholders were contributing only A securities to NewA. I am not clear if this remains the case or if the transaction should instead be analyzed pursuant to 801.40 since one shareholder also is contributing cash, and debt securities of an A subsidiary.

Following is a detailed step summary:

- (1) Each of several shareholders of "A" (the "Founders") from a single member LLC and transfers to it voting securities of A.
- (2) One of the Founders ("B") transfers to NewA one share of A Class A Common stock as a contribution to capital.
- (3) "C," a shareholder of A who is not a Founder, transfers to NewA several shares of Class B Common Stock of A in exchange for an equal number of shares of Class C Common Stock of NewA.
- (4) Each LLC formed by a Founder is merged with and into NewA. The Founders take back Class B Common Stock of NewA as consideration for their A stock.
- (5) A merges into NewA.
- (6) C contributes to NewA (a) the voting securities of a C subsidiary that holds no assets other than a loan to an A subsidiary; (b) cash; and (c) debt securities of another A subsidiary. C takes back additional shares of Class C Common Stock of NewA as consideration.

Four

IF C DOES NOT HOLD 50% OF NEWA AT THIS POINT: THE TRANSFER OF THE V/S OF THE SUB OF C IS POTENTIALLY ALIENABLE; CASH & DEBT ARE NOT.

- A CO. OF ADDITIONAL SHARES ALREADY FILED FOR A (CONC) NEWA AS SUCCESSION CORPORATION.

At the end of the day, C will be the UPE of NewA. C previously filed at the 50% threshold for an acquisition of A stock. If the transaction is analyzed as a merger, that filing would cover this transaction.

If the transaction is analyzed as an 801.40, C is the only shareholder who will have a filing obligation.

Please call me at your earliest convenience to discuss.

Thank you,

[Redacted]

STEPS 1-5 CONSTITUTE A REORGANIZATION WHICH WOULD BE EXEMPT UNDER 7A(C)(10) ASSUMING NO SHAREHOLDER OF A WOULD HOLD A HIGHER PERCENTAGE OF V/S IN NEWA.

*STEP 6 (AT WHICH TIME NEWA HAS BECOME THE SUCCESSION TO A) WILL BE EXEMPT UNDER 802.30 (IF C HAS A 50% OR GREATER INTEREST IN NEWA (WHICH IT PREVIOUSLY FILED FOR).
N.OVUKA CONCURS.*

*Michael Verne
11/29/01*