802.2(d)

Verne, B. Michael

From: [redacted]
Sent: Monday, May 16, 2005 5:13 PM
To: Verne, B. Michael
Subject: Valuation Question

Dear Mr. Verne-

I have two questions for you that I would like to seek clarification on:

I have a client who is inquiring about how operating leases (primarily office equipment leases) are treated in an acquisition sale. If these leases were sold and were not connected to the sale of an operating unit, they would fall under the durable goods exception in Rule 802.2(d)(4), and not be reportable. However since they are being sold in connection with the sale of all of the assets of a business they are not exempt.

Assuming that the above is correct, the question is raised whether this would be treated as a liability or an asset. My client is worried that if the total of all of the assets is $52.9 and our total costs in maintaining the operating leases is $200K yearly, whether this is added to the price, to make it $53.1. (The total sum is likely significantly less, but I'm just using these totals for illustration purposes). As I understand these leases are not currently reflected as a liability on my client's financials. These leases would probably be shown as an expense on the financials and not an accrued liability. My understanding is that assumed liabilities would be added to the total purchase price to determine the acquisition price, however, this is not an accrued liability, but as I understand only treated as an expense item. Under these circumstances should we add these type of leases to the price as if they were a liability, or are they already considered as part of the total price?

The second question I have relates to retaining the accounts receivables. I know that accounts receivables are generally considered assets and are not exempt for reporting requirements. However, if we have a legitimate business reason in keeping the receivables and not transferring them as part of the transaction, will this cause our deal to be suspect if we are close to the threshold? For instance, we want to keep separate the operations of the business related to commissions earned but unpaid prior to the closing date to offset keeping all of the liabilities and payables related to operations prior to the closing date. Our client's business generally has a "reverse float" where our expenses are incurred frequently prior to the payments and it can be easily tracked. Clearly payments for services after the closing date, i.e.., in the form of an earn out would be included, but this is not the same case.

Any assistance you can provide would be greatly appreciated.

Thank you,

[redacted]

OPERATING LEASES THAT ARE BEING STEPPED INTO ARE VALUED ONLY AT WHATEVER PREMIUM (IF ANY) IS PAID TO THE CURRENT LESSEE.

THE SECOND QUESTION DOES NOT PRESENT PROBLEMS.

B. Michael
5/16/05