

Verne, B. Michael

801.11(e)

From: [REDACTED]
Sent: Thursday, May 18, 2006 3:06 PM
To: Verne, B. Michael
Subject: 801.11(e) question

Hi Mike. I left a vm message for you, but thought email might be more expeditious.

New LLC is being formed by several entities, none of which will receive a controlling interest. One participant is contributing a wholly-owned LLC ("LLC2") that owns (1) an operating, but not yet revenue generating, entity; (2) a minority interest in another LLC; and (3) a shell company that holds a contract to purchase 100% of the membership interests of yet another LLC ("LLC3") for consideration in excess of \$56.7 million. All other participants are contributing cash that will be used to purchase LLC3.

I understand that the formation of the New LLC is not reportable, as no person will hold an interest of 50% or more. New LLC will be its own UPE. My question relates to analysis of the subsequent acquisition (to occur soon after formation) of LLC3 by an entity within New LLC. At the time of this acquisition, neither New LLC nor LLC2 will have a regularly prepared balance sheet. The operating entity beneath LLC2 does have a regularly prepared balance sheet. Please confirm that 801.11(e) applies such that the total assets of New LLC (the acquiring person in the acquisition of LLC3) are its assets (including cash contributed upon formation, total assets as reflected on the operating entity's balance sheet and the value of the minority LLC interest owned by LLC2) less cash to be used to acquire LLC3.

Thank you.

[REDACTED]

If the operating entity has a regularly prepared balance sheet, as your description implies, then 801.11(e) is not available to New LLC. See last sentence of first paragraph of Analysis in Interpretation #147 in the Third Edition of the PNPM.

B. Michael
5/18/06