

Johnson, Janice C.

From: [REDACTED]
Sent: Monday, July 31, 2006 4:04 PM
To: Johnson, Janice C.
Subject: Thx re feedback on acquisition of LLC membership interest

Janice,

Confirming our telephone conference this afternoon regarding the inquiry set forth below, I understand that the transaction is not reportable as described. Because the transaction involves the purchase of a membership interest in an LLC, the parties need only determine the purchase price of the membership interest to be acquired and the value of the resulting membership interest to be held by the acquiring party, i.e., \$550,000 and \$800,000 in the fact pattern presented. The parties need not determine the fair market value of the underlying assets in this situation. Thanks again for your cooperation and assistance in this matter.

Called Mr. [REDACTED] on 7/31/06 and informed him that in the acquisition of non-corporate interests, value such interests in accordance with 801.10(d). Do not value the underlying assets held by the LLC.

>>> [REDACTED] 7/31/2006 11:36:06 AM >>>
Janice,

J Johnson
M. Verne [REDACTED]

Thank you for your call this morning. We discussed the following transaction and how one should determine the size of the transaction for HSR reporting purposes.

1. LLC operates a specialty hospital. LLC's members are A (55%), B (25%) and C (20%). LLC has assets with a book value of ~\$32 million (fair market value not yet determined), and liabilities of ~\$40 million currently held by the financing arm of A's ultimate parent entity. The debt is guaranteed pro rata by A, B and C based on their respective membership interest.
2. B proposes to purchase A's membership interest for \$550,000, and will thereafter hold an 80% membership interest in LLC. LLC will simultaneously refinance the outstanding debt and use the proceeds to repay the debt currently held by the financing arm of A's ultimate parent entity.
3. The purchase of A's membership interest constitutes an acquisition of LLC by UPE-B from UPE-A. Both "A" and "B" satisfy the size of person test. I am having difficulty following the new LLC rules regarding the size of transaction test. I believe that the size of the transaction is the greater of the acquisition price or the fair market value of the assets to be acquired, here the specialty hospital.
4. The acquisition price clearly includes the \$550,000 cash consideration. Rule 801.10(d) appears to suggest that the corresponding value of B's membership interest, here \$250,000, should also be included in the acquisition price, but I might not be reading that correctly. Please confirm whether the value of B's membership interest is included in the acquisition price for purposes of Rule 801.10(d).
5. Second, while I understand that the value of the debt guarantee is part of the consideration to be included in the purchase price, please confirm that the amount of debt guaranteed, however, is NOT included in the purchase price (ABA, Premerger Notification Practice Manual,

Interpretation 102).

6. Finally, I understand that one must still make a good faith determination of the fair market value of the assets to be acquired in the transaction described. If that is not necessary, please advise.

Thank you for your assistance in this matter. I do not want to misstate the nuances of the new LLC rules in my opinion letter. Please let me know if you require additional information.

Best regards,



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