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802-4

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, April 18, 2007 6:21 PM
To: Verne, B. Michael
Subject: Analysis of Transaction to Determine Reporting Requirements

Mike - This will confirm our telephone conversation of yesterday and the analysis of whether a proposed transaction will have any premerger reporting requirements. I have received additional information regarding valuations since we talked yesterday, so the amounts have changed from what we discussed, but the concepts are the same.

1. Initial Step. A and B are forming an LLC in which each will hold a 50% interest. A is contributing assets that have a combined value of approximately \$73,200,000 and combined debt of approximately \$36,200,000. B is contributing \$37,000,000 in cash. If we stopped there, the analysis would be as follows:

a. Analysis of A's Acquisition. A is acquiring a controlling interest in an unincorporated entity that holds \$0 in non-exempt assets (A's own contribution is exempt and B's contribution of cash is exempt); thus, A is exempt from reporting requirements under Section 802.4.

b. Analysis of B's Acquisition. B is acquiring a controlling interest in an unincorporated entity that holds \$73,200,000 in non-exempt assets (the value of the assets that A has contributed which are not offset by the debt; B's own contribution is exempt); thus, B is not exempt from reporting requirements under Section 802.4. B must now value its acquired interest under Section 801.10(d), which is equal to the acquisition price of \$37,000,000. Thus, B is not subject to reporting requirements because the size of the transaction for B is less than \$59,800,000.

2. Second Step. There is another step, however. Immediately following B's contribution of \$37,000,000 in cash, the LLC will use the \$37,000,000 to purchase assets from five persons: one person is A and the other four persons are their own UPEs, separate from A and B and each other. From A, the LLC will purchase additional assets that have a value of approximately \$87,400,000 and debt of approximately \$61,100,000, for a purchase price of approximately \$26,300,000. From each of the other four UPEs, the LLC will purchase assets that, in each case, have a value of less than \$10,000,000 for a purchase price of less than \$10,000,000.

a. Analysis of Purchase from A. Because A is one of the parties forming the LLC, the purchase from A will be treated as part of the formation of the LLC, and the purchased assets will be treated as part of A's contribution to the LLC. This will not change the analysis of A's acquisition, however, because all of A's contribution still is exempt and B's contribution of cash still is exempt. Thus, even with the purchased assets added to A's contribution, A still is acquiring a controlling interest in an unincorporated entity that holds \$0 in non-exempt assets and A still is exempt from reporting requirements under Section 802.4.

b. Effect on B's Acquisition. Nor will the LLC's purchase from A change the analysis of B's acquisition in the LLC. This is because even though B is now acquiring an interest in an unincorporated entity that holds in excess of \$160,600,000 in assets (without offsetting debt), the value of B's acquisition still is equal to its acquisition price of \$37,000,000. Thus, B still is not subject to reporting requirements because the size of the transaction for B still is less than \$59,800,000.

c. Analysis of Purchase from Other Four UPEs. Each of these purchases will be analyzed

as an asset acquisition by the LLC which is an asset acquisition by each of its UPE's, A and B. However, each purchase is for assets valued at less than \$10,000,000 for a purchase price of less than \$10,000,000 (taking into account the cash price paid plus any debt assumed). Thus, neither A nor B are subject to the reporting requirements for any of these purchases because the size of the transaction for each purchase, for each of A and B, is less than \$59,800,000.

The final result is that, under these facts, none of the parties, A, B, the LLC or any of the four separate UPEs, are subject to the premerger reporting requirements. Please confirm that you agree. If you do not agree, please call me to discuss.

Thank you for your assistance on this matter.



AGREE
B
4/18/07

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