

802.10

Verne, B. Michael

To: Walsh, Kathryn; Berg, Karen E.

Subject: FW:

Have a look at this please. I think 802.10 works for the shareholders of B because they are acquiring a lower percentage in Newco than what they currently hold in B. Also, B already controls all of the underlying LLCs and the LP. I don't think 802.10 will work for A because it will hold voting securities of Newco, which will control B and A currently has no interest in B. So if A's 22.22% of the voting securities of Newco is valued in excess of \$59.8 MM, A has a reporting obligation. I think the fact that the assets that B holds directly are valued under \$59.8 MM is irrelevant. To see if 802.4 exempts A's acquisition of Newco voting securities, you would have to value the non-exempt assets held directly by B and all of the non-exempt assets of the LLCs and LP that B controls. Any thoughts?

-----Original Message-----

From: [REDACTED]
Sent: Thursday, December 20, 2007 12:51 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: RE:

BM
12/20/07

Here are some facts relating to our call.

[REDACTED]

-----Original Message-----

From: Verne, B. Michael [mailto:MVERNE@ftc.gov]
Sent: Thursday, December 20, 2007 12:45 PM
To: [REDACTED]
Subject: RE:

Sure

-----Original Message-----

From: [REDACTED]
Sent: Thursday, December 20, 2007 12:42 PM
To: Verne, B. Michael
Subject: RE:

shall we arrange a call for 1:45?

[REDACTED]

FACTS

Present Structure

1. A owns 33.33% of LLC-1.
2. B owns 66.66% of LLC-1.
3. LLC-1 owns 100% of LLC-2, which owns 75% of LLC-3, which owns 80% of LP-1. B also owns 10% of LP-1 through another entity.
4. A also owns a direct 5% interest in LP-1.

Re-organization

1. B spins-off a subsidiary but retains certain assets valued at \$30 million - \$60 million.
2. B merges with a Newco and stockholders of B receive Newco shares.
3. A contributes its 33.33% interest in LLC-1 to Newco and its 5% direct interest in LP-1 to Newco in exchange for 22.22% of Newco's voting securities.
4. As a result, stockholders of B will own 77.78% of Newco, A will own 22.22% of Newco.

Analysis

This reorganization falls under Rule 802.10. Under this rule, the conversion of a LLC to a corporation is exempt if no new assets are contributed and either there is no increase in the acquiring person's percentage ownership or the acquiring person controlled the original entity. However, new assets, not owned directly or indirectly by A, are being contributed, but they may fall below the jurisdictional threshold.

