802.10

Verne, B. Michael

From: [redacted]
Sent: Tuesday, October 21, 2008 7:31 PM
To: Verne, B. Michael
Cc: [redacted]
Subject: 802.10

Dear Mike,

We have a transaction the gist of which is a reorganization of an Income Fund into a corporation and a simultaneous acquisition of tax losses from a third party. The steps of the transaction, which all occur simultaneously and are contingent on all other steps, are as follows:

1. Company A is a publicly held Income Fund, and Company B is a publicly held corporation. In connection with the transaction, Company B will form a new holding company (B Holdco) and a wholly-owned subsidiary (Newco) - those steps are intraperson transactions. Company B's shareholders will exchange their Company B shares for shares of B Holdco, pro rata.

2. Company A will transfer all of its assets to Company B in exchange for a number of new common shares of B equal to the number of outstanding Company A fund units and representing more than 50% of the outstanding voting shares of Company B.

3. Company A distributes the newly-issued Company B shares to the unitholders of Company A and Company A redeems its outstanding units.

4. Company B redeems the shares of its common stock held by B Holdco in exchange for the shares of Newco. As a result, B Holdco no longer has any interest in Company B and Newco is a wholly owned subsidiary of B Holdco.

5. As a result of these steps, the unitholders of what was formerly Company A are now the shareholders of Company B, a corporation. Company B is no longer a subsidiary of B Holdco but is held by the shareholders of Company A pro rata, and holds all of the assets held by Company A prior to the reorganization, plus certain tax losses of Company B. The former shareholders of Company B are shareholders of B Holdco, pro rata.

In sum, as a result of the transaction, Company A Income Fund becomes Company B, which other than its change in corporate form is held exactly as was Company A, pro rata, and holds the same assets it held prior to the transaction, plus some tax losses acquired from Company B. B Holdco holds all of the same assets that were held by Company B prior to the transaction, except for the tax losses, which remain in Company B. B Holdco is held by its shareholders exactly as was Company B prior to the transaction, pro rata.

In our view, Company A's conversion from an income fund to a corporation should be exempt under §802.10 since the only new asset that will be held by the reorganized entity consists of tax losses, which should be treated as cash equivalents under §801.21. In addition, the transitory steps described can be disregarded and therefore the above transaction should be exempt from HSR requirements in all respects.

Please confirm that you agree with this analysis.

Agree
B

Many thanks,

[redacted]