

801.1(b)(1)

FACSIMILE TRANSMITTAL

TO: Nancy Ovuka

FROM: [REDACTED]

COMPANY: FTC Premerger

DATE: 8/3/94

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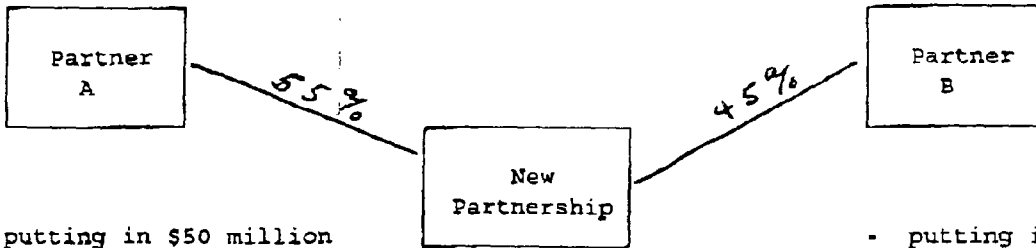
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MESSAGE:

Following is the diagram of the transaction we discussed. I believe the issue boils down to whether the \$165 million being transferred to B (as cash or as assumption of liabilities) can be characterized as an equalization payment within the terms of Interpretation 47.

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- putting in \$50 million
- receives: debenture for \$50 million (although subordinated) and 55% partnership interest

A will be paid first

- borrowing \$165 million
- will distribute that \$165 million to partner B or use it to discharge B's liabilities

- putting in assets having a value in excess of \$215 million
- receives: \$165 million in cash or as assumption of liabilities and 45% partnership interest

A's net contribution = \$50 million *70%*, \$50mm contribution - debenture = 0

B's net contribution = in excess of \$50 million (depending on final value of assets)

Note: The value of the assets is not determined and highly speculative. A is receiving a higher percentage of the partnership because of the risk it is taking in investing in the partnership and helping to eliminate Partner B's liabilities.

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This appears to be an acquisition of assets by Partner A, not an equalization payment. Partner A is contributing less than Partner B, but receiving control of the partnership.

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