

801.50

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, April 17, 2012 11:57 AM
To: Verne, B. Michael
Subject: JV Formation v. Acquisition

Hi Mike,

I have a question about the formation of an LLC. Two parties have already entered into a memorandum of understanding pursuant to which they contemplate a joint venture between the two parties. Party A will form the joint venture as an LLC. Initially Party A (or its subsidiaries) will own 100% of the LLC. At the time of formation, Party A will contribute assets (including IP, factories, cash, working capital and other assets) to the LLC. The value of the assets will exceed the size of transaction threshold.

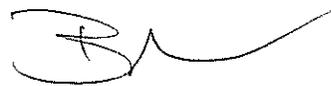
Not sooner than 30 days later, Party B will purchase from Party A and the LLC interests in the LLC such that Party A and Party B will each hold 50% of the LLC. The parties have not yet determined the percentages that Party B will purchase from Party A and from the LLC. Party B will pay cash for its interest in the LLC. The cash payment will exceed the size of transaction threshold. Party B will also contribute to the working capital of the LLC, will contribute an IP license and any other assets agreed to by Party A and Party B. The value of these other contributions has not yet been determined.

I want to confirm with you the appropriate way to analyze this transaction. I believe that the initial formation and contribution will be treated as exempt under 802.30 since Party A is contributing its assets to an LLC it controls. Then we need to look at the acquisition of LLC interests by Party B, and also whether the JV is acquiring assets from Party B that have a value in excess of the size of transaction threshold. Is this how you would look at the transaction, or should we treat both transactions together as a formation under Section 801.50? The parties definitely call this a joint venture; its been structured as a two-step process for legitimate business reasons.

I appreciate your thoughts.

Thanks,

TREAT AS ALL PART OF AN
801.50 FORMATION


4/17/12

[REDACTED]

Consistently ranked a top law firm in the country for client service for 10 consecutive years in [REDACTED]
general counsel and C-level executives.

[REDACTED]