
From: Berg, Karen E.
Sent: Monday, August 22, 2016 2:32 PM
To: [REDACTED] Walsh, Kathryn E.; Shaffer, Kristin; Storm, Evan; Gillis, Diana L.; Carson, Timothy
Cc: [REDACTED]
Subject: RE: Informal Advice: Formation or Consolidation?

[REDACTED]

We would view this as a formation; A and B are not disappearing as a result, nor are they becoming subsidiaries of a new parent entity. See Interpretation 211 in the PNPM for discussion of consolidations.

Karen

From: [REDACTED]
Sent: Monday, August 22, 2016 2:05 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Shaffer, Kristin; Storm, Evan; Gillis, Diana L.; Carson, Timothy
Cc: [REDACTED]
Subject: Informal Advice: Formation or Consolidation?

Under the following circumstances, please confirm our understanding that the transaction would be treated as a formation under 801.50, requiring a filing by A's UPE as the Acquiring Person, with no Acquired Person filing, rather than a "consolidation."

A and PE Co X and PE Co Y intend to create NewCo LLC. A's wholly-owned subsidiary, A Holdings, Inc., will contribute its three wholly-owned subsidiaries, A1, A2, and A3, to NewCo. B's shareholders, PE Co X, PE Co Y and management, will direct B to contribute its wholly-owned subsidiary, B1 LLC, to NewCo. There will be a cash distribution to A and/or B. After the transaction, A will hold a 55% interest in NewCo LLC and B will hold a 45% interest in NewCo LLC. Newco LLC will consist of A1, A2, A3, and B1.

B is its own UPE, while A's UPE is a limited partnership.

As a general proposition, are there any factors that distinguish a consolidation from a formation?

Thank you,

[REDACTED]

[REDACTED]

[REDACTED]