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From: [REDACTED]
To: mverne@ntc.gov <mverne@ntc.gov>
Date: Wed, May 31, 2000 1:56 PM
Subject: Passive Investor Exemption Question

Hi Mike.

As I warned you in my voice mail message, I have a few additional questions on application of the passive investor exemption.

Partnership P is contemplating an investment in an issuer (the "Target"). P's GP is LLC 1. LLC 1 has 5 managing members - LLC A, LLC B, LLC C, LLC D, and LLC E.

Partnership A is entitled to over 50% of the profits or assets of LLC A, Partnership B is entitled to over 50% of the profits or assets of LLC B, Partnership C is entitled to over 50% of the profits or assets of LLC C, Partnership D is entitled to over 50% of the profits or assets of LLC D, and (surprise) Partnership E is entitled to over 50% of the profits or assets of LLC E. Each of Partnership A, B, C, D, and E is its own ultimate parent entity. None of Partnership A, B, C, D, or E is the ultimate parent entity of LLC 1 or Partnership P.

LLC A IS 1 OF 5 MANAGING MEMBERS

For the sake of simplicity, I will describe only the relationship between Partnership A and LLC A. The following description holds true for each of the 5 partnerships (A, B, C, D, and E) and its corresponding LLC, however.

(A) Mr. X is the only managing member of LLC A. Mr. X is one of Partnership A's GPs.

(B) Mr. Y, another GP of Partnership A, sits on the board of the Target. Mr. Y is not a managing member of LLC A, but he is a member of LLC A.

Under the facts described above, could Partnership P utilize the passive investor exemption if it were to acquire and hold 10% or less of the outstanding voting securities of the Target?

One additional question. Same facts as above. In addition, LLC 1 has an investment committee that makes all of its investment decisions. LLC 1's 5 managing members each appoint a representative to sit on LLC 1's investment committee. LLC A has appointed Mr. Y to sit on LLC 1's investment committee. (As you recall, Mr. Y is a GP of Partnership A and sits on the board of the Target. He is a member of LLC A but not the managing member of LLC A.) Can Partnership P still use the passive investor exemption if it were to acquire and hold less than 10% of the outstanding voting securities of the Target?

Thanks for your help Mike.

[REDACTED]

[REDACTED]

T. HANCOCK AGREES.

Michael Verne

5/21/00

I BELIEVE THAT MR. Y IS SUFFICIENTLY INSULATED FROM PARTNERSHIP P, SUCH THAT P'S ABILITY TO CLAIM THE SOLELY FOR PURPOSE OF INVESTMENT EXEMPTION IS NOT COMPROMISED.