

FI 15
802.1(d)

Verne, B. Michael

From: [REDACTED]
Sent: Friday, February 20, 2004 3:06 PM
To: Verne, B. Michael
Subject: Follow up

Mike - on the LLC formation question Tim Hester and I discussed with you on Wednesday, I've gotten some more detail on the mechanics and just wanted to make sure that would not alter the analysis, as it is different than we discussed. In our hypothetical, Company A was contributing a business to the LLC, and would receive cash and a 10% interest in the LLC. The papers will actually reflect a purchase by the LLC from A, the consideration of which will be cash and the 10% interest in the LLC. I don't think this alters the analysis based on prior discussions we've had, where I think you have said the PNO focuses on whether the party whose business lands in the LLC (whether "contributing" or "selling") will retain an interest in the venture. Am I right on the "contribution" vs. "sale" being a distinction without a difference from your perspective?

AGREE.

On a wholly separate deal, I have company X which owns a business, using a building and equipment. X intends to sell the hard assets (building and equipment) to Y, and then immediately lease it all back from Y. X will not sell the contracts, goodwill etc. to Y, and X will continue on in business, now in leased facilities. Y (the buyer / lessor) is not normally engaged in this type of transaction, so 802.63 would not seem to apply. However, if the seller is selling hard assets and then immediately leasing them back, it seems that 802.1(d)(3) might apply. Any thoughts on that?

Thanks,

[REDACTED]

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B. Michael
2/23/04

[REDACTED]

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