

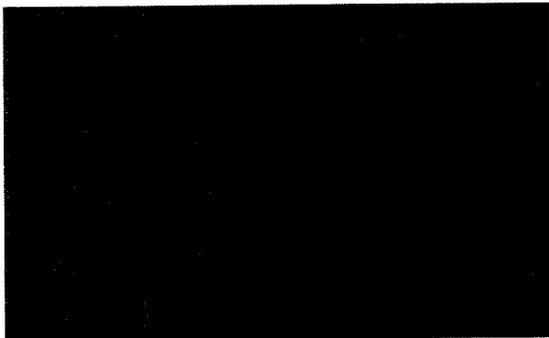
Verne, B. Michael

1999 2(d)

From: [REDACTED]
Sent: Tuesday, November 08, 2005 10:52 AM
To: Verne, B. Michael
Subject: RE: Our discussion yesterday

Mike: When you get a chance, could you shoot me a response to the question in the e-mail below?

And I have another, more technical one, relating to Item 2(c)(iii) on the Form. I am preparing a filing for formation of an LLC in which two parties will each contribute assets, and one of the parties will take back a majority entitlement to the LLC's profits. We talked about this one last week. Because the assets being contributed by one of the parties are not organized as an entity, we agreed that the filing would be an 801.50 formation, not an 801.2(d) consolidation. The contributor getting the majority interest will file, and nobody else files. Here's my question. The agreed value of the non-corporate interest that the majority contributor will acquire is \$83 million. The agreed value of the assets being contributed by the minority contributor is \$60 million. The filing fee is based on the \$83 million (which is the size-of-transaction). But what is the value of the assets that will be held as a result of the formation (i.e., the response to 2(c)(iii))? Is it \$60 million (because the \$83 million is exempt intra-person), or is it \$143 million (combining the value of the two contributions)?



2(d)(iv)

\$83 mm.
B. Michael Verne
11/8/05

From: [REDACTED]
Sent: Friday, November 04, 2005 9:01 AM
To: Verne, B. Michael
Subject: Our discussion yesterday

Yesterday we talked about the fact that a voting rights agreement that confers on somebody the power to vote half or more of the outstanding shares of a corporation would be a "contractual power to designate half or more of the directors" and would therefore confer control of the corporation on the person having that voting power.

HSR counsel on the other side of a deal pointed out Interpretation 46 in the ABA book, which suggests that if the voting rights agreement is revocable, it wouldn't be viewed as conferring control. In my experience, any contractual arrangement is revocable unless it says it isn't, and I take the point that a nominally revocable arrangement that imposes adverse consequences on a revocation may raise a separate issue. So how do I deal with an agreement that confers majority voting rights and doesn't say anything at all about revocability?

Fun, isn't it?