

801.2(d)
801.40

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, August 02, 2006 12:04 PM
To: Verne, B. Michael
Subject: JV Formation

Mike,

Should the following scenario be analyzed under 801.40 or could it also be deemed a consolidation for 801.2 purposes?

Company A and Company B contribute all of their assets to a newly formed corporation (Newco) in exchange for voting stock of Newco, other investors contribute cash to Newco in exchange for voting securities of Newco.

Many thanks,

[REDACTED]

The way I analyze these transactions is that if the NEWCO is upstream from A and B, and A and B shareholders are receiving voting securities of NEWCO in exchange for the voting securities of A and B they currently hold, then it is a consolidation.

If the NEWCO is downstream from A and B, and A and B get voting securities of NEWCO, then it is an 801.40 formation, despite whether A and B are contributing some or all of their assets to NEWCO. In this 801.40 formation current shareholders of A and B continue to hold voting stock of A and B, not of NEWCO.

B. Michael
8/2/06