

Verne, B. Michael

801.10

From: [REDACTED]  
Sent: Wednesday, May 16, 2007 10:38 AM  
To: Verne, B. Michael  
Subject: Another question

Hi, Mike -

I have what is probably a straightforward question. This is the scenario:

LLC A is paying \$60 million cash ("Purchase Price") for 100% of the membership interests in LLC B (LLC A currently holds no interest in LLC B). LLC B holds a minority interest in LLC C; \$20 million of the Purchase Price is being allocated to the LLC C interest and an additional \$10 million of the Purchase Price is being allocated to LLC B options which are being cashed out. I understand that an acquisition of non-corporate interests is valued similar to an acquisition of non-publicly-traded securities so for purposes of 801.10(d) , the value of non-corporate interests to be held as a result of the transaction would seem to be \$30 million? I am grappling with this because I could also see the value as being \$50 million (e.g., Purchase Price minus the options) or even \$60 million.

Thanks very much,  
[REDACTED]

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This is a \$50 million deal. The value of the non-corporate interests of LLC B includes the value of the underlying minority interest in LLC C (despite the fact that the parties are separately allocating \$20 MM to that part of the transaction. This is akin to an acquisition of 100% of the voting securities of a corporation that holds minority interests in other corporations). Note, however, that the value of the interests in C would not count toward the limitation on non-exempt assets in an 802.4 analysis. The \$10 million value of the LLC B options that are being cashed out would not be included in the value of the LLC B interests unless they are being exercised prior to closing. Presumably they do not give the holder any present right to profits of LLC B or assets upon its dissolution.

  
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