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Verne, B. Michael

From: [REDACTED]
Sent: Friday, May 18, 2007 10:48 AM
To: Verne, B. Michael
Subject: Application of the Size-of-Transaction Test

Mr. Verne:

I have the following question regarding the application of the size-of-transaction test.

Facts

Individual A is purchasing for cash 100% of the stock of four corporations. All of the stock of the corporations is owned, directly or indirectly, by three brothers. Corporations 1, 2 and 3 operate automobile dealerships. Corporation 4 owns the real estate on which the other corporations operate. There will be a single Stock Purchase Agreement, and the purchase of the stock of each of the four corporations will mutually dependent.

Corporation 1 is owned as follows. Limited Liability Company 1 ("LLC 1") owns 2,000 shares of voting common stock and Limited Partnership 1 ("LP 1") owns 98,000 shares of non-voting common stock. LLC 1 is the sole general partner of LP 1 and owns a 1% interest. Brother X is the sole member of LLC 1. The limited partners of LP 1 are Brother X (79%), an irrevocable trust (with a corporate trustee) created by Brother X for himself and his family (3.5%) and a second irrevocable trust (with a corporate trustee) created by Brother X for himself and his family (16.5%).

Corporations 2 and 3 are each owned as follows. Limited Liability Company 2 ("LLC 2") owns 2,000 shares of voting common stock and Limited Partnership 2 ("LP 2") owns 98,000 shares of non-voting common stock. LLC 2 is the sole general partner of LP 2 and owns a 1% interest. Brother Y is the sole member of LLC 2. The limited partners of LP 2 are an irrevocable trust (with a corporate trustee) created by Brother Y for himself and his family (10.5%) and a second irrevocable trust (with a corporate trustee) created by Brother Y for himself and his family (88.5%).

Corporation 4 is owned as follows. Brother Z owns 400 shares of voting common and 19,600 shares of non-voting common. Limited Liability Company 2 ("LLC 2") owns 1,600 shares of voting common stock and Limited Partnership 2 ("LP 2") owns 78,400 shares of non-voting common stock.

Brother X, who is the ultimate parent entity ("UPE") of Corporation 1, will receive about \$41 million. Brother Y, who I believe would be the UPE of Corporations 2, 3 and 4, will receive about \$36 million. Brother Z will receive about \$6 million.

Question

For purposes of the size-of-transaction test, are the sales of the four corporations (or in the alternative the sale of Corporation 1, on the one hand, and the sales of Corporations 2, 3 and 4, on the other) treated as separate transactions, in which case the threshold would not be met?

Assuming the brothers are adults and not minors, the sale of Corporation 1 (controlled by Brother X) is a separate transaction from the sales of Corporations 2, 3 and 4 (controlled by Brother Y). Neither would separately satisfy the size-of-transaction test.

BM
5/18/07