

Verne, B. Michael

802.65

From: [Redacted]
Sent: Friday, June 01, 2007 4:05 PM
To: Verne, B. Michael
Subject: Request for Informal Interpretation - 802.65

Dear Mr. Verne:

We would appreciate your confirmation of the applicability of the exemption in Sec. 802.65 to the following transaction.

An existing LLC is currently owned by "B". B seeks a cash investment by Investor "A". A will make a cash-only capital contribution in the LLC in exchange for Class A membership units. Subject to the provisions of an Amended LLC Agreement, these units will entitle A to receive 95% of profit allocations until a "Flip Point" is achieved. The Flip Point is defined as the date of realization of a calculated rate of return for A (together with the satisfaction of certain debt obligations by the LLC to a third party) or the later of the tenth anniversary of the capital contribution or the date that calculated rate of return is realized, whichever comes first. After the Flip Point, A will no longer control the LLC within the meaning of Sec. 801.1(b)(1)(ii), i.e., it will have no right to 50% or more of either profit distributions or assets allocated upon dissolution.

Because (i) A is contributing only cash to the LLC; (ii) the purpose of the transaction is to provide for a cash investment by A in the LLC (i.e., financing); and (iii) the terms of the Amended LLC Agreement are such that A will no longer control the LLC after it realizes its preferred return (or with the lapse of time), we believe that A's acquisition of a membership interest in the LLC is exempt under Sec. 802.65.

Please let us know if you concur with this analysis.

Thank you,
[Redacted]

[Redacted]

AGREE
BM
6/12/07

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