

801.50
802.4

Verne, B. Michael

From: [Redacted]
Sent: Tuesday, June 10, 2008 3:53 PM
To: Verne, B. Michael
Subject: Formation Transaction

Mike,

Should the following scenarios be analyzed under §801.50 or could they also be deemed a consolidation for §801.2 purposes?

Scenario 1. Funds A, B and C will form a US Limited Partnership ("Newco") as follows:

- Fund A will contribute to Newco 100% of the interests in Company A (a U.S. entity) in exchange for 50% of Newco.
- Fund B will contribute to Newco 20% of the shares of Company B in exchange for 12.5% of Newco.
- Fund C will contribute cash to Newco in exchange for 37.5% of Newco.

Simultaneously with these contributions, Newco will acquire for cash the remaining 80% of the shares of Company B from a third party, using as the purchase price the cash contributed by Fund C. As a result, Newco will hold 100% of both Company A and Company B.

Company B's assets are primarily located outside the U.S. and these foreign assets did not generate sales in or into the US of more than \$63.1 million during their most recent fiscal year. Company B's US assets have a fair market value of less than \$63.1 million.

Under the formation analysis:

- Funds B and C are not required to file because they will not control Newco as a result of their investment.
- Fund A's investment in Newco is exempt under §802.4 because the assets of Newco will consist only of: (a) cash; (b) 100% of the interests in Company A, which Fund A already owns; (b) the foreign assets of Company B, the acquisition of which would be exempt under §802.50; and (d) U.S. assets of Company B, which have a fair market value of less than \$63.1 million.

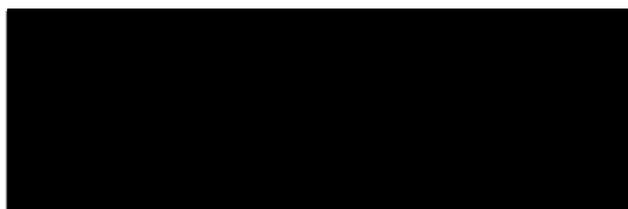
Newco's acquisition of the remaining 80% of Company B is exempt under §802.4.

Is this analysis correct?

Scenario 2. Same facts except that upon formation, no one will hold 50% or more of Newco and Newco will be its own ultimate parent entity.

Is the analysis the same as in Scenario 1 (§802.50 for the formation and §802.4 for the acquisition) or should this scenario be viewed as a consolidation of Company A and Company B?

Many thanks,



I think both scenarios should be treated as a formation followed by the acquisition of 80% of B for cash. I agree that both steps in either scenario would be exempt. This doesn't look like a consolidation to me.

BM
6/11/08