

801.10

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, November 30, 2010 2:43 PM
To: Verne, B. Michael
Subject: Filing Question

Michael,

I think I spoke to you earlier about the following transaction, all parts of which are closing contemporaneously:

1. A forms C, a limited liability company, and contributes to it \$55M in capital.
2. S, B's sole shareholder, sells 80% of the stock of B to C for \$55M.
3. S sells the balance of the stock of B to C for a 20% interest in C.
4. A has total assets or annual net sales of > \$126.9M
5. B has annual net sales of > \$126.9M and total assets of > \$12.7M.

You suggested that I can view the transaction as the formation of C by A, which is an exempt transaction, followed by the purchase of B's stock by C. You then stated that the purchase price is \$55M. Why wouldn't the 20% interest in C also be considered part of the purchase price?

If the 20% interest in C that S acquires is included in determining the Size of Transaction, I'm stumbling on how to value it. C's sole asset before the transaction is the \$55M in cash paid to S, and after the transaction is the stock of B. Would the 20% interest in C be valued in relation to the price being paid for B? If so, I think its value = $.2(\$55M/.8) = \13.75 . If added to the \$55M cash purchase price, the value of B's stock held by C as a result of the transaction would be \$68.75, exceeding the \$63.4M Size of Transaction Test.

I look forward to your analysis.

Thanks,

ACQ PRICE - UNDETERMINED
SOT = FMV OF 100% OF B
Bh
12/2/10

[REDACTED]

[REDACTED]

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