

801. 10

Verne, B. Michael

From: [Redacted]  
Sent: Monday, April 11, 2011 11:57 AM  
To: Verne, B. Michael  
Subject: Series of Transactions  
Importance: High

Mr. Verne:

I left you a voice mail this morning and would appreciate your assistance in determining if the following series of transactions result in any of the parties being obliged to file a Hart-Scott-Rodino Report form.

1. Individual A owns all the shares of Target, and Individual A owns personal assets that are used in the business of Target. A's personal assets are what give the Target business value.
2. Party B forms a limited liability company called "Holdco" and contributes \$34 million to it.
3. Individual A contributes his personal assets (used in the business of Target) to Holdco for \$12.5 million consisting of (i) \$5 million cash (paid from Party B's \$34 million investment) and (ii) 18% interest in Holdco, which is valued at approximately \$7.5 million.
4. Individual A also contributes all of his shares of Target to Holdco, the value of which is *de minimis*.
5. Holdco contributes \$25 million (from Party B's \$34 million investment) to Target, which is now Holdco's wholly-owned subsidiary.
6. Target borrows \$22 million from bank. The loan is guaranteed by Holdco.
7. Target uses the \$25 million contribution from Holdco, and the \$22 million loan from the bank, which is guaranteed by Holdco, to pay off existing debt of \$47 million owed by Target to a different bank.

Individual A has more than \$13.2 million total assets and that Party B has more than \$131.9 million total assets.

A. I am assuming that the formation of Holdco, even if it is deemed to be a joint venture of Individual A and Party B, is not reportable because the only non-cash assets contributed to its formation are Individual A's personal assets and his shares of Target, which together equal approximately \$12.5 million. Do you agree?

B. Do the formation of Holdco (\$34 million) and Holdco's acquisition of Target (\$7.5 million) and Individual A's assets (\$5 million), and Holdco's guaranty of Target's loan (\$22 million) somehow combine to be a reportable transaction? I don't see it.

Please do not hesitate to call me at [Redacted] if you have any questions or need further information.

Thank you,

[Redacted]

[Redacted]

[Redacted]

[Redacted]

AGREE - NOT REPORTABLE  
[Signature]  
4/11/11

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