

Verne, B. Michael

From: [REDACTED]
Sent: Monday, June 11, 2012 4:34 PM
To: Verne, B. Michael; Walsh, Kathryn
Subject: Size-of-transaction question

Mike/Kate:

I am looking into a transaction, and hoping that you can assist with a few questions that I have. Our client, LLC 1 is contemplating a merger whereby its subsidiary(s) will form one or more wholly-owned subsidiaries to merge with and into Targets A, B and C, which are currently controlled by Entity X. LLC 1 is a private company, and its UPE is currently Entity Y. In consideration for the mergers, LLC 1 will issue new equity to Entity X (or an entity affiliated with Entity X). Following the mergers, Entity Y will lose control of LLC 1. It is anticipated that no member of LLC 1 will have 50% or more of the rights to profits, or assets upon liquidation, of LLC 1. The purchase agreement as currently contemplated does not include a determined acquisition price for the equity of Targets A, B and C, nor a stated value for the LLC 1 equity that Entity X will receive.

Under an alternate scenario, Entity X (or an entity affiliated with Entity X), may acquire 50% or more of the equity in LLC 1 in consideration for the mergers as described above. It is still anticipated that Entity Y would have less than 50% of the rights to profits, or assets upon liquidation, of LLC 1 post-mergers.

In addition, debt of LLC 1's subsidiaries and of Targets A, B and C will be refinanced in connection with the mergers, such that the old debt of LLC 1's subsidiaries and of Targets A, B and C will be paid off in cash and new debt will be taken on jointly and severally by LLC 1's subsidiaries and Targets A, B and C. A portion of the debt of LLC's subsidiaries being paid off in cash is held by Entity Y.

Could you please confirm our understanding with regard to each of the following:

- 1- Under the first scenario (where Entity X is the acquired person), assuming that there will not be a value ascribed in the purchase agreement to the LLC 1 equity that Entity X (or its affiliate) will receive in consideration for the mergers, the acquisition price for the mergers is undetermined. Therefore, size-of-transaction should be the fair market value of the equity of Targets A, B, and C (as determined by the board of Entity Y). Should the pre-acquisition debt of Targets A, B, and C be taken into account in determining the fair market value of their equity? **YES**
- 2- Under the alternate scenario, Entity X would be deemed to be the acquiring person. As the size-of-transaction is similarly undetermined, the size-of-transaction will be the fair market value of the equity interests that Entity X will be acquiring in LLC 1 (as determined by the board of Entity X). Should the pre-acquisition debt of LLC 1 be taken into account in determining the fair market value of its equity? **YES**
- 3- Does the refinancing result in any adjustment to the size-of-transaction? **NO** - UNLESS ADDITIONAL DEBT IS TAKEN ON.

Thanks and regards,

[REDACTED]

[REDACTED]

NO - UNLESS ADDITIONAL DEBT IS TAKEN ON.
K. WALSH CONCURS

BM
6/12/12