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Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, September 25, 2012 10:59 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Acquisition Price Question

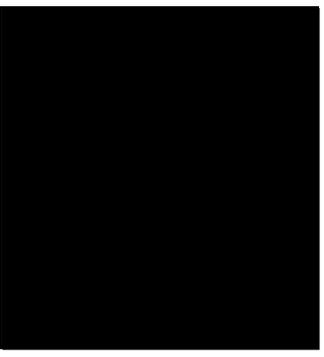
Mike -

I hope you are well. We have two questions regarding the valuation of debt in an acquisition of control over an LLC. Our client (Buyer) is acquiring a 55% interest in Target LLC from Seller. The parties contemplate that prior to/simultaneous with the acquisition, Target LLC, with the assistance of Buyer, will borrow \$75M from a third party and distribute the proceeds of the loan to Seller prior to the acquisition of the equity by Buyer. At closing, Buyer will acquire 55% of Target LLC for \$15 million. Seller will retain a 45% interest in Target LLC. This structure was done for tax purposes, without consideration as to whether it would affect HSR filing obligations.

1. This scenario is similar to informal interpretation #91, in which the PNO determined that the value of the debt need not be included in the acquisition price. The only difference here is that the proceeds of Target LLC's third-party loan will not be used to retire an intracompany debt between Seller and Target LLC. Instead, the proceeds of the loan will be provided to Seller through a dividend. In our situation, must the acquisition price include the Target LLC's newly-acquired debt if that loan is not used to retire an intracompany debt?

2. If Target's LLC's newly-acquired debt should be considered as part of acquisition price, must Buyer include the entire value of the \$75 million loan as part of the acquisition price? As a result of the transaction, Seller will retain a 45% interest in Target LLC. Target LLC will be responsible for the \$75 million debt, but the profit distributions Seller will receive in the future from its 45% interest in Target LLC will necessarily be reduced by the amount Target LLC pays in interest and principal. Seller's future profits from Target LLC will be reduced as a result. If 45% of the \$75 million debt is not considered part of the acquisition price, the transaction would fall below the \$68.2 million size-of-transaction threshold.

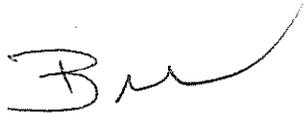
Thanks in advance for your help.



U.S. Treasury Circular 230 Notice

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The proceeds of the loan are not retiring debt, they are part of the consideration to Seller for the 55% interest in Target LLC. We don't think you can prorate the amount by the percentage that Seller is retaining in the LLC. Our call would be that this is a \$90 million deal, as that is the total amount going to seller in exchange for the 55% membership interest that Buyer is receiving.


K WALSH CONWAS
9/25/12