801.21
802.4

Verne, B. Michael

From: [redacted]
Sent: Wednesday, February 13, 2013 4:47 PM
To: Verne, B. Michael
Subject: Tax Equity financing transactions

Mike,

Left you a message, but perhaps email is better.

I have some questions about "tax equity" financing transactions.

In these transactions, investors provide an upfront cash amount to green energy projects (such as wind or solar installations), in return for membership interests which entitle the investor to various payments over negotiated periods of time. The payments include tax credits, which the federal government has sanctioned to transfer from energy companies to investors (since the energy companies usually do not have a high enough tax burden to take advantage of these tax credits, allowing them to be transferred to investors who do have higher tax burdens and thus would benefit from the tax credits is designed to encourage investment in these energy initiatives).

Does the PNO treat these tax equity transactions any differently than other transactions involving acquisitions of interests in non-corporate entities?

If not, I assume that (1) the same test applies in determining whether a filing is required (whether the tax equity investor is receiving control of the non-corporate entity), and (2) tax credits are not included as "profits" under the definition of control of a non-corporate entity.

Also, if these transactions do not involve membership interests, would the tax credits the investor is receiving in return for its investment be considered "assets" under the HSR rules? I would think not, but wanted to check.

Thanks.

[redacted]

Nothing reportable here. The formation of the non-corporate entity would be exempt under §802.4. Tax credits are assets, but we treat them as cash equivalents.

BM
2/14/13

KW CONCURS