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Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, March 13, 2013 11:15 AM
To: Verne, B. Michael
Subject: Question re: capital leases/installment sales

Mike,

I understand that ordinarily entering into a lease is not the acquisition of an asset. I understand that entering into a lease can be considered the acquisition of the leased asset where the lease is a capital lease or installment sale that will exhaust the useful life of the asset. I also understand that the transfer of an existing lease is always the acquisition of an asset (the rights in the lease) but that the value is limited to the premium paid by the buyer over the lease payments it will assume. Does this lease valuation rule govern the transfer of an existing capital lease? Or would the value of a capital lease instead be determined under 801.10(b) - the FMV of the underlying asset, consistent with the exception that treats entering into capital leases as asset acquisitions?

I couldn't find an ABA letter on point, but this must have been addressed before. Thanks for your assistance.

Best regards,

[REDACTED]

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Bearing in mind that a capital lease is akin to an installment purchase agreement, the lessee receives the asset to use at the time of entering into the agreement and takes title to it at the end of the lease term. Presumably the person who is acquiring the capital lease is reimbursing the current lessee for all or part of the payments it has already made. Probably only a portion because the asset that will be acquired is now used, not new like when the original lease originated (I can't imagine that the asset has appreciated in value, so why would there be a premium paid to step into the capital lease?). Since the amount being paid to the current lessee only represents the portion of the value of the asset that the current lessee has already paid for, it doesn't represent the full value of the asset, so I would say that the value would be the current full fair market value (reflecting depreciation because it is used) of the underlying asset.

Bmm ✓

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KW/SP CONCERN