

Sheinberg, Samuel I.

To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Formation question 801.40/801.50

From: Sheinberg, Samuel I.
Sent: Wednesday, September 04, 2019 3:59 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Formation question 801.40/801.50

[REDACTED]

We agree with all three of your points.

Sam

From: [REDACTED]
Sent: Tuesday, September 3, 2019 2:43:23 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Formation question 801.40/801.50

Dear all,

We have a JV formation where *JV Partner 1 is contributing assets* (nonexempt, valued in excess of \$90 million) and *JV Partner 2 is contributing only cash which will be used to fund the JV entity* (the cash will not be distributed out to JV Partner 1). JV Partner 1 and JV Partner 2 will each hold 50% of the JV entity (an LLC). We understand that if one JV partner contributes cash, and the cash contributions stay at the JV entity, this structure is viewed as a formation and not an acquisition (<https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/1606002>).

Do you agree that:

1. JV Partner 2 would file as acquiring person in a formation filing to hold 50% of Newco's noncorporate interests (because JV Partner 2 is acquiring control of the assets being contributed to the newly-formed JV entity by JV Partner 1);
2. JV Partner 1 has no filing obligation because in the formation, JV Partner 1 is not acquiring control of any new assets (i.e., because JV partner 2 is only contributing cash to fund the newly-formed JV entity); and
3. The JV entity would not have a filing obligation for the formation.

[REDACTED]

[REDACTED]

[REDACTED]