

801.1(b)(1)

FACSIMILE TRANSMITTAL

TO: Nancy Ovuka

FROM:

COMPANY: FTC Premerger

DATE: 8/3/94

FAX NO.: (202) 326-2050

TIME:

MAIN NO.: (202) 326-3100

DIRECT FAX LINE:

NO. OF PAGES

CHARGE TO:

MESSAGE:

Following is the diagram of the transaction we discussed.

whether the \$165 million being transferred to B (as cash or as assumption of liabilities) can be characterized as an equalization payment within the terms of Interpretation 47.

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- putting in \$50 million

- receives: debenture for \$50 million (although subordinated) and

- borrowing \$165 million

- putting in assets having a value in excess of \$215 million

receives: \$165 million

A's net contribution = \$50 million 17%, \$50mm contribution - debenture = 0

B's net contribution = in excess of \$50 million (depending on final value of assets)

Note: The value of the assets is not determined and highly speculative. A is receiving a higher percentage of the partnership because of the risk it is taking in investing in the partnership and helping to eliminate Partner B's liabilities.

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This appears to be an acquisition of assets by Partner A, not an equalization payment. Partner A is contributing \$50 million, but receiving control of the partnership.