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Acquisitions & Dispositions Of Partnership Interests

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Steve is a partner of Norton Rose Fulbright US LLP and practices in the Houston office's tax section. His practice focuses on advising clients on all areas of business taxation, with particular emphasis on the federal and state tax consequences of mergers and acquisitions, tax-free reorganizations, spin-offs and divestitures, joint ventures, restructurings, and equity and debt offerings, as well as the formation and operation of corporations, partnerships, and limited liability companies. In addition, he represents clients in contested tax matters before federal, state and local tax authorities and federal and state courts. Steve also counsels on a wide array of Texas state and local tax matters, including Texas state and local tax incentives and exemptions and Texas tax legislative matters. Steve has been recognized in Chambers, The Legal 500, The Best Lawyers in America and has been voted by his peers as a "Texas Super Lawyer." He is a certified public accountant and is licensed to practice law in Texas. Before attending law school, Steve was a manager in the tax department of Peat, Marwick, Mitchell & Co. (now KPMG).

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INTRODUCTION

With limited liability companies ("LLCs") being the entity of choice for over two decades, in part due to limited liability and providing flexibility for members to define their relationship under state law, and in part due to being eligible for classification as a partnership for federal income tax purposes, there has been a proliferation of businesses that are classified as partnerships, and as a result, an increase in the number of merger and acquisition transactions involving LLCs classified as partnerships. Unlike corporate transactions, the federal income tax consequences to partners and partnerships of merger and acquisition transactions in many respects depends on whether the "aggregate" theory or the "entity" theory applies. Additionally, the body of law with respect to the federal income tax consequences of mergers and acquisitions involving partnerships is not as developed as the body of law for comparable corporate transactions. As a result, analogies are regularly made to the tax consequences of corporate transactions to determine the tax consequences of what appear to be similar partnership transactions, but such analogies are often inapplicable.

This presentation describes several fact patterns that involve LLCs that are classified as partnerships for federal income tax purposes that engage in various merger and acquisition transactions. A proposed structure for effecting each transaction is illustrated that highlights a tax issue that results from that structure, and then a revised structure is illustrated that eliminates such tax issue and otherwise achieves the business objectives. Where applicable, the difference in tax treatment due to the "aggregate" theory or "entity" theory applying to the particular structure is highlighted, as well as instances where analogies can and cannot be made to corporate transactions.[1]

[1] The views expressed in this paper are not necessarily the views of Norton Rose Fulbright US LLP.

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