

801.1(b)

Verne, B. Michael

From: [REDACTED]  
Sent: Thursday, April 06, 2006 4:28 PM  
To: Verne, B. Michael  
Subject: 801.1(b) Control Question

My client, for tax reasons, is setting up a Newco to acquire 100% of the non-corporate interests of an entity for an acquisition price of greater than \$56.7 million, but less than \$226.8 million. Before signing the purchase agreement, the Newco incorporator (one of my client's officers) will appoint other officers of my client to all of the Newco director positions. Newco will have no balance sheet, no assets (other than cash to make the acquisition) and will have issued no voting securities. At closing, Newco will issue my client only convertible voting securities.

My question is whether my client is Newco's UPE for HSR reporting purposes as it does not hold 50% of Newco's voting securities and there is no contract that gives my client the right to control Newco's board (even though they do presently control the board but will not after closing)? If not, is Newco its own UPE?

I hope this makes sense, let me know if you need clarification.

Thanks for your time,

Newco IS ITS  
OWN UPE  
B. Michael  
4/6/06

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