

802.35

Verne, B. Michael

From: [REDACTED]  
Sent: Tuesday, May 15, 2007 9:51 AM  
To: Verne, B. Michael  
Subject: UPE of Company controlled by ESOP Trust

Dear Mr Verne:

Please clarify whether the ESOP Trust or the Corporation is the UPE for filing purposes in the following situation:

Employee trust ("ESOP Trust") that complies with section 401 of the Internal Revenue Code owns 85% of the outstanding stock of Corporation, the company which employs the employees who are the beneficiaries of the trust. Company has the contractual right to appoint the trustee of the ESOP Trust. No one else has a contractual right to designate a majority of the board of the Company.

ESOP Trust is now selling the stock of Company to third party in a transaction in which an HSR filing will be made. It is my understanding, consistent with section 802.35(b), that the ESOP Trust is controlled by the Company because of the Company's ability to designate the Trustee and that the Company is its own UPE in this situation. Therefore, the Company and not the ESOP Trust should be identified as the Acquired Person on the Acquired Person's filing.

Please confirm or correct my understanding. Thank you .

[REDACTED]

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CORRECT - THE COMPANY IS THE UPE, NOT THE ESOP.

Brewer  
5/15/07