

801.1(b)

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, October 02, 2012 7:03 PM
To: Verne, B. Michael
Cc: Berg, Karen E.; Walsh, Kathryn
Subject: Question on UPE

Mr. Verne:

I have a question regarding determination of UPEs in a transaction. Acquirer is buying a business operated by three related entities: two limited liability companies (LLC1 and LLC2) and a limited partnership (LP). As presently structured, the acquisition price for the equity interest in all three entities exceeds \$68.2 million. We have determined that the parties meet the size of persons test. If all three entities have the same UPE, the transaction is reportable. However, as set forth in greater detail below, we believe that while LLC1 and the LP share a UPE, LLC2 has a different UPE. As the amount of the purchase price properly allocated to LLC1 and LP, and the amount of the purchase price properly allocated to LLC2, is each less than \$68.2 million, we believe the transaction to be non-reportable.

90% of the equity interest in LLC1 is owned by a GRAT established by Individual A. While the GRAT is irrevocable, Individual A is the trustee of the GRAT and has the power to appoint successor trustees. Thus, Individual A controls LLC1. 801.1(b)(2). In addition, Individual A owns 51% of the equity interest in the LP and thus controls the LP. 801.1(b)(1)(ii). Accordingly, Individual A is the UPE of both LLC1 and the LP.

90% of the equity interest in LLC2 is owned by a separate trust established by Individual A. The trust is irrevocable. Individual A is not trustee of the trust, nor does Individual A have the right to appoint any trustees of the trust. Individual A does not have a reversionary interest in the trust, but does have the right, without the approval of the trustee, to acquire or reacquire the principal of the trust by substituting other property of equivalent value. We have determined that this right of substitution is not a reversionary interest under 801.1(b)(2) and that the trustee (who has the right to name a successor trustee or trustees) controls the trust and thus controls LLC2. We would like to know if you agree with this analysis.

Thank you for your assistance.

[REDACTED]

[REDACTED]

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Actually, there are three separate UPEs, so still not reportable. The UPE of LLC1 is the GRAT, not individual A. Having the right to appoint successor trustees does not on its own confer control of the GRAT. A does control LP by holding a 51% interest. The Trust is not controlled by A, so it controls LLC2.

BJ
10/3/12

K. WALSH CONCURS