

801.1

Verne, B. Michael

From: [REDACTED]
Sent: Friday, April 11, 2014 8:41 AM
To: Verne, B. Michael; Walsh, Kathryn
Subject: Question Re: 801.1(c)(4); trusts; reversionary interest

Dear Mike and Kate

I have an issue regarding the control of a trust that I want to run by you.

Natural person A establishes a trust, whose beneficiaries are A's four children. Under the terms of the trust, A has no interest in the corpus of the trust, except in the very unlikely (and very unfortunate) circumstances that all of his children die before him, and there are no other descendants (e.g. grandchildren).

Although under Rule 801.1(c)(4) a settlor is deemed to hold the assets of a trust if s/he retains a *reversionary interest* in the corpus of the trust, the rules do not define "reversionary interest" for HSR purposes. The clearest guidance I have found is in informal opinion 1006005 (June 15, 2010), which states at item 7 of its conclusions

A possibility of inheritance is not a reversionary interest for HSR purposes, a settlor of a trust would not be deemed to hold the corpus of a trust or otherwise control a trust for HSR purposes based on being a remote and contingent beneficiary of a trust, and a person (other than a settlor of trust) would not control a trust based on being a beneficiary of the trust, even if that person is a present beneficiary of the trust.

(Emphasis added).

Given that, in this situation, A is only a remote and contingent beneficiary of the trust that he established, it appears that he does not have, for HSR purposes, a reversionary interest in the trust.

Please let me know if you agree.

Thanks and best regards,

[REDACTED]

AGREE
fw concerns
B. Michael
4/11/14

[REDACTED]

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