

Gillis, Diana L.

From: Gillis, Diana L.
Sent: Tuesday, March 03, 2015 2:58 PM
To: [REDACTED]
Cc: Walsh, Kathryn E.; Berg, Karen E.; Whitehead, Nora
Subject: RE: Question re: Voting Trusts [REDACTED]

Matt,

We analyze voting trusts like shareholder agreements or proxies. The 2014 interpretation you cite is on point, and since the voting trust is irrevocable, it would be the UPE. The other two interpretations are outdated.

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From: [REDACTED]
Sent: Friday, February 27, 2015 5:57 PM
To: Walsh, Kathryn E.
Subject: Question re: Voting Trusts [QBLLP-ACTIVE.FID37688931]

Hi, Kate-

I have a question relating to the treatment of voting trusts based on what appears to me to be conflicting advice over the years in the informal interpretations that I'm hoping you might be able to clarify for me sometime next week.

In Informal Interpretation 1406014 (<http://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/1406014>), Mike Verne and you agreed that the UPE of an entity having a group of shareholders who had formed and transferred a majority of the entity's shares to an irrevocable voting trust was the voting trust itself. The question posed in that Interpretation is silent as to what happens when the term of the voting trust expires, but I assume that the shareholders who were the settlors of that voting trust would have their shares revert back to them. I am dealing with an essentially analogous situation, though with two voting trustees (who are also the two biggest minority shareholders of the entity being acquired) acting in the role of trustee.

Nevertheless, a couple of older informal interpretations seem to use standard trust-related UPE analysis to suggest that such a reversionary interest in the context of a voting trust means that the settlors of the voting trust are deemed to hold the shares contributed to the trust rather than the voting trust itself being deemed to hold those shares:

Informal Interpretation 9902004 (<http://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/9902004>)

Informal Interpretation 9301003 (<http://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/9301003>)

Your guidance from 2014 seems to make intuitive sense in the context of a voting trust--the traditional trust rule about reversionary interests seems inapt in this context--but I wanted to confirm that I was interpreting the current PNO position correctly. As you might imagine, the answer to this question governs what our filing looks like rather than dictating whether or not we have to file. Please let me know if I can add any additional color to my question, and thank you in advance as always for your assistance.

[REDACTED]

[REDACTED]

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