

801.1(b)

Verne, B. Michael

**From:** [REDACTED]  
**Sent:** Wednesday, April 28, 2004 4:26 PM  
**To:** Verne, B. Michael  
**Subject:** Following up our telephone call

Mike, Thank you for clarifying that the retained annuity payment provided by a GRAT does not constitute a "reversionary interest" of the settlor. However, with respect to the power of the settlor to remove the trustee, because I feel this is such a close call and the language of the GRAT that you and I discussed earlier this morning is not as clear as I would like, I thought I would set forth the provision itself. Although the provision only uses the word "replace", we interpret this language to mean that the settlor has the right to "remove and replace" the trustee, and thus he would be deemed to "control" the trust. I just wanted to see if you agreed with our conclusion based on the actual language of the trust document. The language reads as follows:

"[the settlor] reserves the right to replace the Trustee and to designate one or more successor trustees by instrument in writing; provided however, that the Settlor may not be named or qualified to serve as a successor trustee."

There are no other provisions specifying under what circumstances or by whom the Trustee may be removed. The reason this is an issue is because the same individual is the settlor of two trusts (both with identical trust documents but for two different beneficiaries). Neither trust owns 50% or more of the outstanding voting securities of the entity that is a party to the transaction in question, but if the settlor were deemed to control both trusts and thus the holdings were aggregated, the settlor would become my ultimate parent entity. It will not make a difference in whether or not we file - we clearly meet the size of the person test with just the entity, the stock of which is held by these trusts, it simply affects who my ultimate parent entity is.

Please let me know what you think now that you have seen the specific trust language. Many thanks.

[REDACTED]

THIS SOUNDS LIKE MORE THAN JUST DESIGNATING A SUCCESSOR IF THE TRUSTEE DIES OR RESIGNS. THE "RIGHT TO REPLACE" LANGUAGE IMPLIES THAT THE SETTLOR CAN REMOVE THE TRUSTEE. ADVISED THAT THE SETTLOR IS THE UPE. N. OVUKA CONCURS

*B. Michael*

4/29/04