801.1 (b)

Verne, B. Michael

From: [redacted]
Sent: Tuesday, July 25, 2006 7:11 PM
To: Verne, B. Michael
Subject: Control of Unincorporated Entity

Dear Mike:

In a situation where the governing agreement of a non-corporate entity does not designate a fixed percentage of profits or assets upon dissolution, we understand that "control" of the entity would be determined by applying the formula to the total assets of the entity at the time of acquisition as if the entity were being dissolved at that time. 70 Fed.Reg. 11,504 (3/8/2005).

To apply this formula, would one assume a hypothetical sale of the JV to a third party and apply the formula to the sale proceeds? If so, what assumed sale value should be used?

Or, does the 3/8/2005 release in effect just tell us to review the size of the parties' opening capital accounts under partnership accounting rules to determine control?

I ask this question because some dissolution formulae require different profit allocations, depending on the source of the income, prior to return of capital accounts.

Thanks in advance,

[redacted]

Use the size of the parties' opening capital accounts if this is in connection with the formation. If it is in connection with an acquisition by an existing non-corporate entity, use its most recent balance sheet, or if it has not prepared one, a pro-forma using any acceptable accounting methodology.

B. Michael
7/25/06