

801.11(e)

Verne, B. Michael

From: [Redacted]
Sent: Monday, November 01, 2010 8:25 AM
To: Verne, B. Michael
Cc: [Redacted]
Subject: Question - Size-of-person test

Mike,

A founder of an oil and gas company set up a partnership for his five adult children many years ago. Each child holds an equal interest in the partnership so the partnership is its own UPE.

The primary asset of the partnership is the stock it holds in the father's company (the "Company"). The Company stock held by the partnership represents about 25% of the Company's outstanding shares. (The father still owns about 25% of the Company stock individually. The remainder of the Company's stock is traded on one of the public stock exchanges.) The stock held by the children's partnership has a current market value of slightly more than \$150 million. The children's partnership holds a few other assets (cash, investments in other companies, and a some small interests in oil and gas properties) but the total value of these other assets is less than \$10 million.

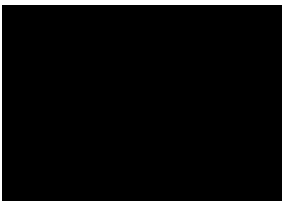
The father may want to transfer some of the Company shares he owns to the children's partnership and/or the children's partnership may want to buy some of the Company shares on the open market.

Rule 801.11(b)(2) effectively says that the total assets of an entity shall be as stated on the last regularly prepared balance sheet but that the balance sheet may not be older than 15 months. Rule 801.11(e)(1)(ii) says that if an entity does not have a regularly prepared balance sheet it may exclude the value of the securities of the acquired person it already holds when it acquires shares of that person for purposes of calculating the size-of-person. I have two questions:

1. If the partnership does not have a regularly prepared balance sheet prepared within the last 15 months (but has some that are older than that), can they take advantage of the 801.11(e)(1)(ii) rule that allows them to exclude the value of the Company stock when calculating size-of-person?
2. Is there any other rule or interpretation that would allow the children's partnership to exclude the value of the Company stock from size-of-person calculations when it acquires additional shares of Company stock?

Thanks very much Mike. Please let me know if you have any questions on these facts.

Regards,



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Thank You.

I agree that you would fall under 801.11(e) if the most recent regularly prepared balance sheet is older than 15 months.

BR
11/4/10