

How to Comment on IRS Proposed Regulations

As discussed in our previous e-letter, the Internal Revenue Service has proposed changes to IRC 2704 that would eliminate discounts for lack of control and lack of marketability for the valuation of privately held, minority interests that are controlled in aggregate by the same family. The impact of the proposed regulations on the transfer of an interest in a family owned business includes the following:



1. The regulations would create a two-tiered tax system where owners of a family owned business would pay 40%-50% higher taxes on a transfer of an interest than the owners of a business owned by unrelated parties. As a result, family controlled businesses might be forced to sell or take on debt to pay the additional tax burden. As an example, if an individual dies owning a 30% interest in a family owned business, the interest would be valued on a controlling, marketable basis. A similar 30% interest in a company with unrelated ownership might be valued with discounts of 30% to 50%.
2. The change would impose a tax increase on the transfer of family owned business interests. Since 62% of the jobs in the US are created by family owned businesses, this could impact economic growth, reduce hiring and hinder capital investment.
3. Business continuity arising from the transfer of ownership to future generations would be threatened.
4. The proposed regulations are unclear about many issues and may cause confusion and unintended consequences.

If you or your clients would like to comment on the IRS' proposed changes to IRC 2704 before the deadline of November 2, 2016, you may do so by going to:

<https://www.federalregister.gov/documents/2016/08/04/2016-18370/estate-gift-and-generation-skipping-transfer-taxes-restrictions-on-liquidation-of-an-interest>

The link provides address information to submit comments on this issue by mail or you may comment online by clicking on "Submit a Formal Comment." In addition, comments that have already been submitted by other concerned parties can be viewed.

The Small Business Administration (SBA) is also concerned about these new regulations. If interested, you can voice your comments to the SBA by contacting Dillon Taylor at the SBA's Advocacy in Washington, D.C., at 202-401-9787 or Dillon.Taylor@sba.gov.

In addition to the above, it is highly recommended to contact your U.S. Representatives and U.S. Senators to express concern about the IRS proposed regulations. Two congressmen have already proposed bills that would revoke the proposed regulations. It currently appears that H.R. 6042 introduced by Rep. Sensenbrenner will be the leading bill to challenge the IRS' proposed changes to the 2704 regulations.

The proposed regulations are subject to a 90-day public comment period that ends November 2, 2016. A public hearing is set for December 1, 2016, after which the regulations will be evaluated. If approved by the Department of Treasury, the changes could be issued and implemented as early as 30 days following the public hearing.

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