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Update on Proposed Regulations Affecting Valuation Discounts

ESTATE PLANNING, INTERNAL REVENUE SERVICE, TAX
BY

In August of this year, the Internal Revenue Service ("IRS") unveiled proposed regulations under Section 2704 of the Internal Revenue Code that would modify the rules regarding the valuation of interests in certain family-owned businesses for estate, gift, and generation-skipping transfer tax purposes. As expected, the proposed regulations created shockwaves across the estate planning and business valuation communities as practitioners studied the rules and prepared formal comments to the IRS. This article is to provide readers with an update to our previous discussion of this topic in light of comments by the IRS and the transformed political landscape.

The IRS received feedback from thousands of affected parties during the prescribed comment period that ended on November 2. A public hearing on the proposed regulations was held at IRS headquarters on December 1. Attendees included more than 30 representatives from across a broad spectrum of industries, as well as prominent members of the American Institute of CPAs, the American College of Trust and Estate Counsel, and the American Bar Association. Those in attendance uniformly called upon the IRS to withdraw the proposed regulations, or, at a minimum, to heavily revise and reissue such regulations.

Catherine Hughes, the estate and gift tax attorney-adviser in the Treasury's Office of Tax Policy, made no such promises but did provide some meaningful assurances regarding the scope of the proposed new rules. Most importantly, Ms. Hughes clarified that the proposed regulations are not intended to eliminate minority discounts. She further assured the attendees that the final guidance will unambiguously state that the rules do not create a deemed put right, and that the three-year rule regarding deathbed transfers will not be applied retroactively.

The future of the proposed regulations remains uncertain. For now, it is clear that the version of the proposed regulations released by the IRS this past summer will not be published in its current form. At the hearing, Ms. Hughes told attendees that it was too early to determine whether the IRS, in light of the comments received, will withdraw and reissue new proposed regulations or simply move forward with final rules. In addition, several republican lawmakers have introduced legislation to block the proposed regulations from taking effect. Although these bills initially stood little chance of becoming law, the recent republican victories in the 2016 election may pave a path to success for future legislative efforts to block the regulations. We will keep you posted with updates on this topic as they occur.

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