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GENERAL NEWS

Wealth Planning Alert

On August 2, 2016, the Treasury Department issued Proposed Regulations that would eliminate virtually all minority or lack of control discounts for family controlled entities (including family limited partnerships, LLCs and corporations, regardless of whether active businesses or passive holding companies) for gift, estate and generation-skipping transfer tax purposes. Public Hearings on the Proposed Regulations are scheduled in Washington, DC on December 1, 2016. The Treasury announced that most of the new rules would not be effective before 30 days after the Proposed Regulations become final. Hence, it is possible the new Regulations will take effect sometime late this year or early next year. As a result, it is important to complete any discount-related planning during the next several months.

For many years, minority or lack of control discounts have been an important factor in clients' estate planning and "estate freezing" strategies, such as Grantor Retained Annuity Trusts ("GRATs") and sales of family business interests to Grantor Trusts. Obviously, those techniques were still viable even without discounts; however, discounts increased the leveraging opportunities and made those techniques even more attractive and financially successful. Moreover, many wealthy clients still hold some of their assets in commonly controlled entities (such as family limited partnerships or active operating businesses).

The IRS has challenged the use of discounts, but with mixed success. Thus, they want to eliminate discounting within families as a matter of law. Indeed, in many publications including the President's annual "green book", the IRS and the President have targeted valuation discounts. While rumors of the Sec 2704 Regulations have circulated for years, they were not issued until this summer.

Assuming the Proposed Regulations are finalized, they would eliminate essentially all valuation discounts on family controlled businesses, even active businesses. For these purposes, a family's interest in 50% of the equity in an entity is deemed control. Similarly, in the case of a limited partnership, a family member having a controlling interest in the general partner is deemed control.

After the publication of the Final Regulations, estate planning with closely-held family entities will continue to be a viable strategy in many instances. Families will still be able to implement traditional estate planning strategies to transfer the future appreciation on assets out of the transferor's gross estate.

However, the opportunity to leverage the planning with valuation discounts may come crashing down later this year (after December 1, 2016), and families who wish to maximize their planning opportunities should move expeditiously. Please note further that business appraisers are expected to be very busy toward the end of the year, so any planning should begin immediately.