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Discounts on Minority Interests in Businesses

BY JARED BISHOP AND ANDREW IRVINE • OCTOBER 21, 2016

The IRS recently published [proposed regulations](#) that could reduce the efficacy of estate planning tools used by taxpayers to transfer assets to future generations. The proposed regulations would limit estate, gift, and generation-skip valuation discounts for transfers of minority interests in family corporations, family limited partnerships, and other closely-held business entities.

Currently, taxpayers can fund a family controlled business entity and subsequently transfer minority interests in that entity to their family members at a discounted rate. In valuing those interests for transfer tax purposes, the donor is allowed discounts for lack of control and marketability. The IRS's proposed regulations will severely limit valuation discounts available to taxpayers.

In addition to the proposed reduction of available discounts, the proposed regulations will restrict the ability to transfer interests in closely held businesses through the use of a "lapse." For example, lack of control or minority discounts on transfers that cause a "lapse" of voting or liquidation rights will now be subject to a three year look-back period from the time of death. If a taxpayer transfers a portion of the taxpayer's interest in the family controlled business entity, causing the taxpayer to forfeit a majority interest right (such as a voting right or liquidation right), the taxpayer will not be able to claim a minority discount unless the transfer occurred at least three years before the taxpayer's death.

The proposed regulations are currently in a public comment period, with a public hearing scheduled for December 1, 2016. Soon after the public hearing, the Treasury Department will issue final regulations. The regulations will become final 30 days after they are issued. Taxpayers should be aware of these proposed regulations and be proactive with regard to minority interest transfers in family controlled business entities before the proposed regulations take effect.