**[Insert Date Here]**

**[Insert Congressperson Name Here]**

**[Insert Address Here]**

**Dear [Senator][Congressman]:**

On August 2, 2016, the Treasury Department released proposed regulations under Section 2704 of the Internal Revenue Code. These proposed regulations would make significant changes to the manner in which minority interests in family-controlled entities are valued for estate, gift, and generation-skipping transfer tax purposes. If allowed to go into effect as written, these rules would impose a de facto 25 to 50 percent tax increase on each transfer, and severely hamper many of these businesses.

Under the current tax law and rules, when transferring a non-controlling interest in **any** type of entity, valuation discounts for lack of control and lack of marketability are generally applicable. This is because the definition of value is “fair market value”—what a third party willing buyer would pay to a willing seller. Fair market value reflects the reality of the marketplace. This reality includes the fact that a buyer will not pay as much for a non-controlling interest that is not readily marketable, and as such is reflected through the use of discounts.

Under the proposed regulations, the IRS would single out family owned businesses and make them subject to a new valuation standard. The meaning of the IRS’ new definition is unknown because the proposed regulations are incomprehensible, nonsensical and indecipherable. Our nation’s greatest tax authorities have written a great deal about these proposed regulations and it is clear they cannot agree upon what these regulations mean, other than the fact they likely mean the significant curtailment – or outright end – of the use of valuation discounts

One thing is certain, however. The IRS is trying to reinstitute “family attribution”—a discredited notion that all family members get along and act in concert at all times. Time and time again the IRS has attempted to establish this draconian view of valuation only to be rebuffed by those who see the fallacy in this philosophy. The intent of the proposed regulations is to institute a significant stealth tax hike in the estate and gift taxes. Family businesses and partnerships will see their estate and gift taxes jump by 25% to 50% (or more)—depending upon what these opaque regulations mean.

In the *Estate of Bright*, the Supreme Court dismissed the IRS’s position that families will always work in concert and always agree on business and financial matters. This caused the Treasury Department to issue Revenue Ruling 93-12 which makes clear that discounts for lack of control cannot be denied simply because the interests are passed from one family member to another. Citing *Bright* and RR 93-12, numerous Tax court cases and opinions of federal courts of appeal affirm that “fair market value” is the one and only definition of value for federal estate and gift tax purposes. Now, the IRS seeks to abandon its own ruling—but only when it comes to **family owned businesses**.

Furthermore, The IRS proposes – by regulatory fiat – to overturn both existing private party contractual agreements and various **state laws** by ignoring the marketability restrictions placed on interests when valuing them for taxation purposes. Not only has IRS assumed the authority granted Congress to impose taxes, they are doing so through federal preemption – an outcome that is difficult to comprehend.

The impacts to family owned businesses would be significant. At a minimum, these businesses would be forced to delay capital investments or hiring as the available cash will go toward paying an increased tax bill. Worse, these businesses may take on more debt simply to pay the IRS. Finally, business owners may decide to sell or liquidate the business rather than continue on as a family owned going concern. The last outcome is highly destructive, especially of smaller businesses.

There is legislation proposed in the [Senate (S. 3436)][House (H.R. 6100)] to defeat the IRS’ plan to increase taxes through regulatory action, referred to as *The Protect Family Farms and Businesses Act.* Please work with your colleagues to prevent this highly destructive proposal from becoming reality, and support this critical legislation.

Sincerely,