Talking Points Against IRS Section 2704 Proposed Regulations

- *Proposed Regs Unfairly Increase the Values of Fractional Interests in Family Controlled Businesses and Holding Companies for Estate and Gift Tax Purposes.* The result is a “stealth” tax increase of 25 to 50 percent (or more) in taxes. The root cause of the tax increase is the IRS’ institution of the discredited notion of “family attribution.”
- *IRS Replaces Fair Market Value with a New and Unknown Definition of Value– Counter Its Own Standard.* Revenue Rulings 59-60 has long been clear on the issue of what standard of value is to be applied: The price at which a hypothetical willing buyer and seller at arm’s length would agree to buy/sell an interest for. Based upon the realities of the marketplace, the fair market value of a minority interest is not worth as much as that interest’s pro-rata share of the whole entity. This is because such interests do not enjoy control or marketability. These required valuation adjustments are referred to as “discounts.” The IRS now proposes the use of a new valuation theory for taxing intrafamily estate and gift transfers, with the seller and buyer allowed to be known parties. Because of the lack of clarity in the proposed regulations, valuation discounts will either be reduced substantially or disregarded altogether. This renders useless all accumulated prior knowledge built up by decades of Tax Court precedent, appraisal education and experience and academic research.
- *The IRS’s Return of “Family Attribution” Has Been Rejected by the Supreme Court and the IRS Itself.* In *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. Subsequent Revenue Ruling 93-12 makes clear that discounts for lack of control cannot be denied simply because the interests are passed from one family member to another.
- *The Rule Treats Intrafamily Transfers Differently Than Those Involving Non-Family Third Parties.* The proposed rule applies only to transfers from one family member to another; meanwhile, non-family third parties can still claim the same discounts on similar estate or gift transfers. IRS does not provide any reasoning as to why this disparate treatment exists.
- *The Proposal Would Override Limitations Placed on Interests in the Business – Including Those Imposed by State Law.* 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.
- *The Impacts to Family Owned Businesses Will be Significant.* At a minimum, these businesses will 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 small businesses.
- *Support the Protect Family Farms and Business Act!* The House bill proposed by Rep. Warren Davidson (R-Ohio) is H.R. 6100. The Senate bill proposed by Sen. Marco Rubio (R-Florida) is S-3436.