



BOUSQUET HOLSTEIN PLLC

Alert

Trusts & Estates Practice Group

IRS Regulations Target Family Estate Tax Planning

Syracuse, New York

August 2016

The U.S. Treasury recently issued proposed regulations under Section 2704 of the Internal Revenue Code that severely limit the use of valuation discounts for transfers of limited liability company ("LLC"), partnership and corporate ownership interests among family members.

If finalized as proposed, the regulations will negatively impact popular estate planning strategies, such as the gifting or sale of minority and non-voting interests in family-owned entities to children and grandchildren or to trusts for their benefit.

Under current law and existing appraisal practice, it is customary and appropriate to value at a discount ownership interests in these types of entities when the interest being transferred does not have the ability to control the entity (such as a minority or non-voting interest), or if there is not an established market for the ownership interest or if the interest itself is non-marketable, whether by agreement or otherwise. A minority ownership of shares in closely-held corporations, and of partnership and membership interests in limited partnerships and LLCs, generally is considered to be difficult to market due to the non-existence of any public market for such an interest (unlike the entities themselves, for which there might be a market).

In the past, valuation discounts for these types of ownership interests, when valuing them for gift or estate tax purposes, have ranged from 5% - 40% of the value of the enterprise as a whole.

The proposed regulations will reduce or eliminate most of these discounts when the interest being transferred is in a family-controlled entity being transferred to or for the benefit of a family member. These rules will apply to entities that operate businesses as well as entities that primarily invest in publicly traded securities, private investment portfolios and real estate.

The Treasury will solicit comments on the proposed regulations, to be followed by a public hearing on December 1, 2016. The effective date of the regulations will be the date they are published as final regulations in the Federal Register.

If you are considering transferring interests in LLCs, partnerships or corporations to family members or to trusts for their benefit, we strongly advise that such transfers take place prior to December 1, 2016, and certainly before the effective date of the final regulations.

The Trusts and Estates Practice Group at Bousquet Holstein PLLC is available to assist in advising on gift, estate and generation skipping tax planning in general, and specifically on planning for the use of discounts in intra-family transfers prior to implementation of the final Section 2704 regulations.



David A. Holstein

Individuals seeking to preserve their wealth, pass down a family business, or maximize the value of their companies need intelligent planning that reflects in-depth knowledge of business, tax and estate law—and the certainty that the professional providing this sensitive level of service can be trusted. For over 30 years, individuals and businesses have trusted David Holstein to protect and position their assets for optimal growth, minimize their tax liabilities, and listen, understand and respond to their concerns. **If you would like more information or to discuss how these new IRS regulations will impact your estate planning, please contact David at 315.701.6301 or dholstein@bhlawpllc.com.**