

Proposed new regulations would, if enacted, eliminate most valuation discounts for closely held entities.

Under current law, a client may be able to transfer an interest in a closely held corporation, partnership, limited liability company or other entity to family members (outright or in trust), by gift or by sale, at a value that is discounted due to certain restrictions on the transferred interest (typically, restrictions on transferability or liquidation rights). These discounts have been available for active businesses as well as entities holding passive investments (such as limited liability companies invested in private equity, hedge funds and marketable securities) and have been a valuable estate planning tool for reducing the transfer tax cost of transferring closely held entities to family members.

Estate planning techniques that capitalize on these discounts include (i) selling a minority interest in a closely held entity to a grantor trust for the benefit of family members at a discounted price, often for a note, (ii) funding a grantor retained annuity trust (a "GRAT") with a minority interest in a closely held entity so that the annuity payments are based on a discounted value and (iii) funding gifts with minority interests in closely held entities valued at a discount. In each case, the discount may allow a client to transfer a larger ownership interest in the closely held entity to family members at no additional gift or estate tax cost.

On August 2, 2016, the Department of the Treasury released proposed regulations under Section 2704 of the Internal Revenue Code that, if enacted in their current form, would significantly curtail, and possibly eliminate, the ability to claim valuation discounts for interests in closely held entities, including interests in operating businesses.

The proposed regulations will not go into effect until issued in final form, and because the proposed changes are subject to a notice and comment period and a public hearing scheduled for December 1, 2016, it is not anticipated that the changes would be finalized prior to the end of 2016.

If you are interested in taking advantage of the ability to transfer an interest in a closely held entity to or for the benefit of family members at a discount, you should contact us promptly.



Please contact any of the attorneys in our Private Clients Practice Group if you have any questions regarding transfers of interests in closely held entities or would like to discuss any other aspect of your estate plan.

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