Proposed Treasury Regulations Curtail Estate and Gift Tax Valuation Discounts

Previously sent as an important alert in August.

On August 2, the Treasury Department issued proposed regulations under Internal Revenue Code Section 2704. The regulations are designed to eliminate the use of certain valuation discounts for controlled entities for estate, gift, and generation-skipping transfer taxes.

Specifically, if the proposed regulations are finalized, they would essentially disallow valuation discounts customarily applied to closely-held family business entities including family limited partnerships ("FLP"). The regulations implement the new rules by revising the existing regulations that define various valuation discount concepts such as what constitutes control and determine the effect of lapses in voting and liquidation rights and restrictions.

The proposed regulations will become effective 30 days after they are finalized by the Treasury Department. With regard to the timing of that effective date, the Treasury Department has provided a 90-day comment period which ends on November 2, 2016. All comments on the regulations are due on that date. A hearing is scheduled for December 1, 2016.

The Treasury Department has indicated the new rules will be applied on a prospective basis. Since the regulations will not become effective until 30 days after finalization, taxpayers may have a window of time to receive the benefits of discounting by gifting FLP or other closely-held family business entity interests before the end of 2016.

Due to the extreme time sensitivity surrounding these changes, we recommend that you contact your Whitley Penn LLP tax advisor who can work with you and our Estate and Gift Tax group to determine what planning techniques can be implemented before the end of the year.

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