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Proposed Regulations Seek to Significantly Limit Common Estate Planning Tool

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The Internal Revenue Service (IRS) has issued long-expected proposed regulations aimed at eliminating the availability of certain valuation discounts for most family-controlled entities. These proposed regulations are promulgated pursuant to authority granted to the IRS under Internal Revenue Code Section 2704 – a statute providing for special rules applicable to certain lapsing rights and restrictions.

A link to an article published in July 2015 describing some of the benefits from valuation discounts can be found here.

The proposed regulations amend and expand existing rules that seek to limit taxpayers' ability to take advantage of valuation discounts. The effect of these proposed regulations is a practical elimination of the ability to apply a 'minority interest' (lack of control) discount when computing the value of an interest in a family-controlled entity for transfer or estate tax purposes. The regulations also include new provisions and amendments relating to the application of these rules to interests in a limited liability company and transfers within three years of death (i.e., "deathbed transfers"), among others. It was widely anticipated that the proposed regulations, when released, would include an exception for active, operating businesses, but that is not the case.

These broad, expanded limitations will not go into effect until 30 days following the final publication of the regulations, which will not occur until sometime after a 90-day period for receiving comments and an official hearing scheduled in early December 2016.

These proposed regulations, if finalized without meaningful changes, will significantly impact taxpayers' ability to claim certain valuation discounts in connection with transfers of interests in family-controlled entities during life and at death – a tool long used by clients and their estate planners to efficiently transfer wealth to successive generations. It is important that you consult with a tax and estate planning professional to determine whether there are any steps that you can take to potentially eliminate or reduce future tax obligations before these proposed regulations take effect.

For more information about these proposed regulations or how you may be able to take advantage of the opportunity to make lifetime transfers of interests in a family-controlled entity before the proposed regulations take effect, please contact Tyler Ball or any of the attorneys in the Firm's Tax Group.