November 29, 2016

Mr. John D. MacEachen
CC:PA:LPD:PR (REG-163113-02)
Internal Revenue Service, Room 5203
Ben Franklin Station, P.O. Box 7604
Washington, DC 20044

RE: Comments to Proposed Regulations on Estate, Gift, and Generation Skipping Transfer Taxes; Restrictions on Liquidation of an Interest (REG-163113-02)

Dear Mr. MacEachen:

I am a business appraiser who has been practicing for 27 years. I hold the following business valuation designations:
1. Accredited Senior Appraiser – American Society of Appraisers,
2. Master Certified Business Appraiser – The Institute of Business Appraisers, and
3. Certified Valuation Analyst – National Association of Certified Valuators and Analysts.

While not the exclusive focus of my practice, my primary focus has been preparing federal gift and estate tax business appraisals.

Having invested more than 80 hours in reading and rereading the proposed regs, listening to or attending multiple presentations including American Bar Association and Colorado Bar Association webinars, doing multiple presentations on the topic, communicating with numerous attorneys and business valuation colleagues, reading too many articles and emails, it's my perception that Treasury is primarily focused on remedying perceived abuses of gift and estate regulations associated with *Estate of Harrison*, *Kerr v. Commissioner* and similar disputes. While I believe the preceding is the perspective Treasury wants to communicate, I did not come to that conclusion until the end of the 80 hours.

With the preceding as background, I offer comments and suggestions as a business appraiser and not as a legal expert.

Under § 2701, expansion of the regs to include entities other than corporations and partnerships is appropriate. It is unclear to me, however, if tenant-in-common ownership interests and perhaps other forms of ownership should be included in the expanded scope. Even if they are, I am concerned that the proposed 50-percent control-threshold would not represent the financial realities of a tenant-in-common real estate ownership interest (absent an operating agreement to the contrary). Whether it's a fractional real estate or other asset interest, I encourage Treasury to more closely consider and address my concerns in the proposed § 2701 regulations.

Regarding § 2704-2 and the perceived abuses associated with deathbed transfers, I am sympathetic toward Treasury's concerns about fact-intensive inquiries needed to resolve claims associated with such transfers. However, I am also troubled that inflexible, "bright-line" rules may be potentially abusive, too. Examples follow:

1. A healthy 55-year-old business owner makes intra-family gifts. Two years and 11 months after making the gifts, she is the unfortunate victim of a fatal traffic accident when a semi-truck crosses the center line of a two-lane road. Her clearly accidental death will negate mindful and legitimate estate planning strategies implemented without motivations similar to the perceived abuses of the above cited cases.
2. In the same scenario, it's unclear to me whether the proposed regs will claw back into her estate her intra-family gifts at the original transfer value or their possibly appreciated value. If it is the latter, her clearly accidental death again will negate mindful and legitimate estate planning strategies implemented without motivations similar to the perceived abuses of the above cited cases.

It's my understanding that "applicable restrictions" associated with proposed § 25.2704-2 apply to liquidation rights associated with the entity, as opposed to an individual owner. If my interpretation is correct, including explicit language similar to what I have offered will make the regs more understandable to my profession.

It's also my understanding that "disregarded restrictions" associated with proposed § 25.2704-3 apply to liquidation rights associated with individual owners, as opposed to the entity. If my interpretation is correct, including explicit language similar to what I have offered will make the regs more understandable to my profession.

While I understand Treasury's perception of abuses associated with third-party owners inasmuch they may affect the inability to liquidate an ownership interest or the entity, I am again concerned that inflexible, "bright-line" rules may be potentially abusive, too. As an example, any business less than three-years old will not comply with this bright-line rule, regardless of the legitimacy of the unrelated-party capital structure. I encourage Treasury to identify and adopt alternate, more flexible language that accomplishes its goals of preventing taxpayer abuse without imparting inflexible constraints on legitimate ownership structures and strategies.

The term "liquidation" is used throughout the proposed regulations and relies on a definition cited in the current gift tax regulations:

> "[T]he right or ability, including by reason of aggregate voting power, to compel the entity to acquire all or a portion of the holder's equity interest in the entity, whether or not its exercise would result in the complete liquidation of the entity."

In contrast, the term "liquidation" in the business valuation profession refers to the process of dissolving the <u>entity</u> (not a fractional ownership <u>interest</u>) and distributing *pro rata* to all owners the proceeds associated with sale of the entity's assets.

Treasury's definition is more consistent with what the valuation profession calls a "put" right.

To increase clarity and understanding among business valuation professionals, I encourage Treasury to use the financial term "put" (in lieu of "liquidation") to describe an owner's ability "to compel the entity to acquire all or a portion of the holder's equity interest in the entity" (with the preceding quote coming from the current gift tax regs). Further, the term "liquidation" only should be used to describe dissolving the entity (not a fractional ownership interest) and distributing *pro rata* the proceeds associated with sale of the entity's assets.

As I read the proposed regs, operating documents or state law which impose a contractual or statutory value on the purchase or sale of an ownership interest at a price other than "minimum value" (as defined in the proposed regs) have to be valued at minimum value using "general accepted valuation principles." Regarding the preceding, I encourage Treasury to:

1. Adopt explicit language stating my interpretation, if it is correct.
2. Define "general accepted valuation principles." The proposed regs use the preceding expression seven times as if it is a defined term. However, I know of no business valuation glossary, standards or treatise that defines the expression. Providing a concise definition will enhance understandability of the proposed regs.
3. Explicitly state that the definition of "minimum value" includes liabilities other than those allowed under § 2053. Legitimate examples might include but not be limited to the following (some of which might appear on GAAP financial statements but not on income-tax-basis financial statements, with the latter often being a business appraiser's source of financial data in smaller companies):
   a. C corporation built-in gain taxes (while admittedly controversial, the 11th Circuit Court of Appeals nonetheless has indicated it should be recognized "as a matter of law"),
   b. environmental liabilities,
   c. informal "sinking fund" liabilities associated with capital reserve funds, and
   d. potential litigation judgments.

In summary, I applaud Treasury for its efforts to clarify the existing regulations. I hope my comments contribute to that effort.

Thank you for your consideration.

Sincerely,

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Managing Director

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