CPA Practice Advisor

If the regulations are not formally withdrawn, Treasury and the IRS should take into consideration the concerns and recommendations that the AICPA and other commentators have identified and issue new, clarified proposed regulations for public comment ...

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The American Institute of CPAs (AICPA) has asked the Treasury Department and the Internal Revenue Service (IRS) to withdraw regulations regarding the valuation of interests in corporations and partnerships for estate, gift, and generation-skipping transfer tax purposes. The regulations were proposed under Internal Revenue Code section 2704.

In a January 13 comment letter, AICPA Tax Executive Committee Chair Annette Nellen, CPA, CGMA, Esq., stated, "The AICPA urges Treasury and the IRS to formally withdraw the proposed regulations." The regulations "are overly broad and expand the breadth of section 2704 in a manner not contemplated by Congress," Nellen wrote.

"If the proposed regulations are not formally withdrawn, in order to satisfy the adequate disclosure rules to start the running of the statute of limitations on a gift tax return, taxpayers and practitioners will continue to need to include a disclosure statement with the gift tax return when the value of a gift may not be consistent with the proposed regulations," Nellen stated.

Nellen also cited the negative effect the proposed regulations would have on family-owned businesses as a reason for withdrawing them. "The regulations place additional burdens on owners of family businesses who want to ensure the business remains in the family. There are valid, non-tax reasons for the restrictions that exist in the operating agreements of family-owned businesses that Treasury and the IRS will subject to these proposed regulations. The proposed regulations would place an

Treasury and the IRS should also delay any effective date until at least six months from issuance of regulations and provide a grandfathering rule to exempt transactions occurring prior to the issuance of final regulations, Nellen wrote. "Taxpayers have relied on prior rules in their planning and will need time to analyze, consider and understand the implications of the new regulations," she explained.

The letter offered analysis and recommendations to Treasury and the IRS on seven issues:

- Formal withdrawal of the proposed regulations;
- Exception for active trades or businesses;
- Valuations (including redefining fair market value, redefining family control, redefining marketability, disregarded entities and appraiser penalties);
- Items that pertain to multiple provisions in the proposed regulations and attribution rules;
- Three-year look back rule;
- Transfers subject to applicable restrictions; and
- Disregarded restrictions.

Nellen noted that the January 13 comment letter supplements the technical tax issues testimony and valuation issues testimony the AICPA presented at the Department of the Treasury and IRS hearing on December 1, 2016.

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