Proposed Regulations Related to Section 2704 and the Case for Applying FLP Valuation Discounts

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Over the past 20 years, the Internal Revenue Service has argued that valuation discounts applied in the transfer of family limited partnership and of other family-controlled holding entity ownership interests are "constructed" solely to avoid intergenerational wealth transfer, gift, estate, and generation-skipping transfer taxes. The legal profession and the valuation profession have argued the opposite position: that is, that valuation discounts applied in family wealth transfers are prudent, legitimate, and market-based. This discussion considers (1) proposed regulations with respect to Section 2704 and (2) the case for applying FLP valuation discounts.

Introduction

High net worth families often utilize the family limited partnership (FLP) ownership structure and other entity structures:

1. to move wealth to their heirs during their lifetimes and
2. to safeguard wealth, ensuring that it passes to the right individuals and charities.

An FLP is a type of partnership that typically holds a variety of property (for example, business interests, real estate investments, publicly traded securities, privately held securities) contributed by partners (both general and limited) that are family members.

An FLP is used for one or more business purposes (for example, limited liability, separation of ownership control, compliance with substantial case law, and asset protection from creditors and other adverse parties).

One of the most appealing aspects of an FLP is the ability of a high net worth individual to make transfers of limited partnership interests (via gift, sale, or other transfer) to his or her descendants on a fair market value basis that incorporates a valuation adjustment (i.e., discount).

As compared to the value of the underlying assets of the FLP, valuation discounts are often applicable to transfers of limited partnership ownership interests due to characteristics of:

1. lack of control and
2. lack of marketability.

However, some taxpayers will take advantage of the FLP structure in order to diminish their tax obligation. These bad actors have caused the Internal Revenue Service (the "Service") to scrutinize FLPs.

On May 10, 2015, Cathy Hughes, an attorney-adviser tax lawyer of the Treasury Department's Office of Tax Policy, spoke at an American Bar Association (ABA) tax section meeting. She commented on various proposed regulations, anticipated regulations, and special projects.

One noteworthy comment regarded a proposed regulation with respect to Internal Revenue Code Section 2704(b)(4). This proposed regulation may affect valuation discounts applied to transfers of closely held FLP and limited liability company (LLC) interests.

The Proposed Regulations

Ms. Hughes indicated that the tax and estate planning professions could look to the Obama Administration's prior budget proposals on valuation discounts for clues to what the proposed regulations may provide. In particular, Ms. Hughes indicated that the proposed Section 2704 regulations might be released by mid-September.

However, on September 18, 2015, at an ABA Tax/Real Property, Trust, and Estate Law meeting, Ms. Hughes stated that the Service was "getting closer" but cannot predict when the proposed regulations would be provided. Leslie Finlow, a Service senior technician reviewer, at the AICPA fall tax division meeting on November 4, 2015, noted that guidance of regulations would be submitted "very soon."

Ms. Hughes also said, "We're not looking at the Greenbooks or anything President Obama said four years ago . . . We're looking at the statute, and the statute as it looks now is what you will see at the conclusion."[1]

Some of this delay is probably due to letters sent by some estate planners to the Service. For example, Richard L. Dees, an attorney with McDermott Will & Emery in Chicago, provided a 29-page letter to the Treasury Assistant Secretary of Tax Policy and the Internal Revenue Service Commissioner detailing why implementing the legislative proposals by regulation "would be invalid as contrary to origin, purpose and scope of the current statute."[2]

However, the threat of these regulations to estate planners still exists. The ideal goal from the Service's perspective would be to eliminate intrafamily transfer valuation adjustments, which may represent a 25 to 45 percent discount from the net asset value of the effective underlying assets transferred.

Such proposed regulations seem overreaching and unsupportable when one contemplates the various scenarios under which these regulations would apply. Further, the proposed regulations guidance detracts from the market evidence exhibited for similar investment interests.

The goal of eliminating the apparent abuse of FLP valuation adjustments is easily negated by publicly and privately disclosed transactions of similar interests.

This discussion addresses the background of Section 2704, the to-be-proposed regulations, and the case for applying valuation adjustments for FLPs and other privately held, family-controlled entities.

Background of Section 2704

In 1990, Congress enacted Chapter 14 of the Internal Revenue Code, particularly Sections 2703 and 2704, to prevent the perceived abuses of the tax system. Chapter 14 was enacted to provide a set of rules for estate and gift tax compliance purposes for valuing transfers of equity interests in corporations or partnerships to a member of the transferor's family.

Specifically, Chapter 14 outlines "applicable restrictions" that are appropriate and specifies when such restrictions are disregarded in determining the transferred interest value.

Of the four sections within Chapter 14 (Sections 2701 to 2704), only Section 2702 does not have application to FLPs.

The application of Section 2701, Special Valuation Rules in Case of Transfer of Certain Interests in Corporations or Partnerships; Section 2703, Certain Rights and Restrictions Disregarded; and Section 2704, Treatment of Certain Lapsing Rights and Restrictions, in the context of transfers of equity interests in FLPs, are generally discussed below:

- The sections apply to all transfer restrictions in the partnership agreement.
- The sections are designed to prevent the use of buy-sell provisions, options, calls, puts, or other transfer restrictions to distort the value of the assets for transfer tax purposes.
- The sections provide a safe harbor for transfer restrictions, if restrictions:
  - are a bona fide business arrangement,
  - are not a device to transfer property to family members for less than full and adequate consideration, and
  - are comparable to similar arrangements entered into in an arm's-length transaction.

It is important in the design of the FLP to use state partnership law restrictions on transfer of partnership control (i.e., assignee rights).

Other restrictions on transfer or use of ownership interests should be structured to be consistent with third-party arrangements (i.e., right of first refusal, limitation to hypothecate, etc.).

Section 2704(b), which deals with restrictions affecting the ability of a partnership or corporation to liquidate, is likely to be the focal point of the to-be-proposed regulations.

This section states that if there is a transfer of an interest in a corporation or partnership to a member of the transferor's family, and immediately before the transfer the transferor and his family have control of the entity, any "applicable restrictions" are disregarded when determining the value of the transferred interest [Section 2704(a)].

An "applicable restriction" is defined to be a restriction that limits the ability of the partnership to liquidate, and such restriction either lapses after a transfer or the transferor and members of his/her family, alone or collectively, have the right to remove the restriction [Treasury Regulations Section 25.2704-2(b)].

A restriction is not an "applicable restriction" if it is not more restrictive than the limitations under state law [Treasury Regulations Section 25.2704-2(b)].

Restrictions imposed on the partnership as part of financing or equity participation with an unrelated party are not an applicable restriction for purposes of Section 2704 [Treasury Regulations Section 25.2704-2(b)].[3]

Section 2703(b) provides that Section 2703(a) will not apply to any option, agreement, right, or restriction that:

1. is a bona fide business arrangement,
2. is not a device to transfer the property for less than full and adequate value to family members, and
3. has terms comparable to similar arrangements entered into by persons in arm's-length transactions.

Therefore, if the restriction satisfies the requirements of Section 2703(b), the restriction is considered in the determination of the value of the partnership interest.[4]

Therefore, from a planning perspective, one factor in obtaining valuation discounts in an FLP transfer is to rely on state law restrictions on liquidation and voting rights in the particular state in which you choose to form the FLP.

Section 2704(b) ignores certain "applicable restrictions" on liquidation (which normally would justify a value discounted for lack of control and/or lack of marketability) in valuing family-controlled entity interests that are transferred to other family members.

Relevant Judicial Decisions

Judicial decisions and state statutes have limited the applicability of Section 2704(b) in many cases by recharacterizing restrictions so that they no longer fall within the definition of an "applicable restriction."[5]

In a 2001 Field Service Advice (FSA 200143004), which discusses Sections 2703 and 2704, the Services' Office of Chief Counsel explains how the Service may deploy the provisions in a gift tax matter.[6]

This FSA addressed seven concerns the Service has with regard to family entity transfers. Many of these concerns address case-specific factors. The Service has previously lost in Tax Court on most of the issues it advocates for in the FSA. Nevertheless, the FSA addresses areas that the Service would argue against, such as disregarding the entity as a non-bona-fide business and issues related to gifts on formation of the entity.

An FSA offers guidance furnished by the Office of Chief Counsel upon the request of a Service director or an area director. The FSA is prepared in response to the technical or procedural questions that develop during a proceeding.

A request for an FSA generally stems from an examination of a taxpayer's return, a consideration of a taxpayer's claim for a refund or credit, or any other matter involving a specific taxpayer under the jurisdiction of the territory manager or the area director.[7]

Many of the historical disputes regarding the interpretation of Section 2704 have been argued by use of compliance with Section 2036, which regards an exemption due to a bona fide sale for full consideration. *Bongard*[8] set the base with its "legitimate and significant non-tax reason" test. Subsequent opinions have made a slight modification.

In *Rector*,[9] Judge Laro articulated the test as a "legitimate and significant nontax BUSINESS reason."

In *Rosen*,[10] Judge Laro stated that the "reason was an important one that actually motivated the formation of that partnership from a business point of view."

In *Bigelow*,[11] the judicial conclusion referred to "any legitimate, significant non-tax-related business purpose based on objective criteria."[12]

However, the Service still sees a fair amount of noncompliance with FLP transfers, particularly with respect to proper business documentation with valuations and compliance with Section 2036 and Section 2704.

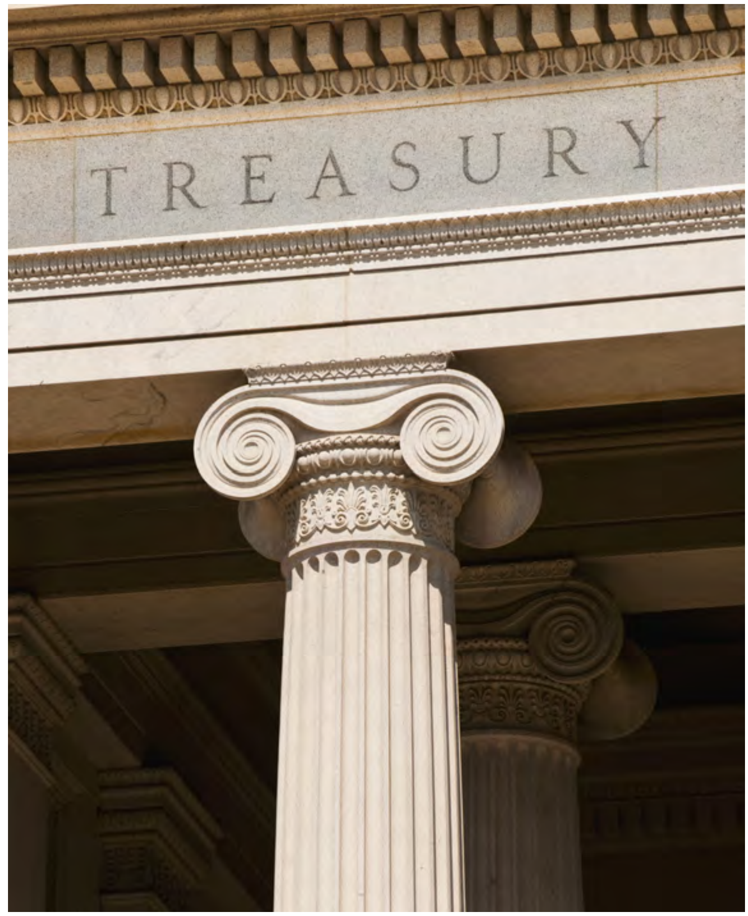
The Service perceives this as a large loss of revenue resulting from abuses with FLPs, indicating high taxpayer noncompliance.

Potential Restrictions to Be Set Forth in the Proposed Regulations

Treasury regulations are usually effective on the date that the final regulations are issued. Several years typically separate the time regulations are proposed from the time regulations are finalized. In very limited situations, the proposed regulations provide that they will become effective when finalized retroactive to the date of the proposed regulations.

Section 2704 was initially enacted to limit the use of valuation discounts in connection with gifts of family entity interests. The concern was that taxpayers were imposing restrictions on a transferred interest that artificially reduced the value of the gift tax obligation, even though the economic value of the transferred property to the recipients was not similarly affected.

However, Section 2704(b)(4) does state that "[t]he Secretary may by regulations provide that other restrictions shall be disregarded in determining the value of the transfer of any interest in a corporation or partnership to a member of the transferor's family if such restriction has the effect of reducing the value of the transferred interest for purposes of this subtitle but does not ultimately reduce the value of such interest to the transferee."



Although most tax professionals believe the Service does not have the authority to ignore control and marketability considerations without legislative approval by Congress, the language provides some broad interpretation for the rumored to-be-proposed regulations to stand ground.

Many practitioners believe that, if enacted, an amendment to Section 2704 would ultimately be overruled by the Tax Court, in a manner consistent with *Kerr v. Commissioner* in 1999.

In that case, the Service argued that the term "applicable restriction" in Section 2704(b) includes any restriction that limits the ability of a partner/member to liquidate its interest in the FLP/LLC that is more restrictive than state law. The Tax Court rejected the Service's interpretation.[13]

Another issue with these Section 2704 to-be-proposed regulations relates to compliance with the precedent Tax Court cases involving gift and estate tax issues. The standard of value used in gift and estate tax analysis is *fair market value*, as this term is used in the regulations under the Internal Revenue Code.

Fair market value is defined as the price at which the subject property would change hands between a hypothetical willing buyer and a willing seller, with both having reasonable knowledge of all relevant facts, and neither party being under any compulsion to buy or sell.

Fair market value also assumes that the price is paid all in cash or its economic equivalent at closing. The factors surrounding the determination of fair market value are discussed more fully in Revenue Ruling 59-60, as amended and amplified by subsequent revenue rulings and interpreted by the courts.

A deviation from this standard of value would, more likely than not, need to be drafted in any proposed regulation.

These two conflicting areas are likely delaying the Service from issuing any proposals in this area.

On May 10, 2015, Ms. Hughes noted that previous Obama Administration budget proposals could be reviewed for context on how the proposed regulations could be drafted.

The Obama Administration 2010 through 2013 fiscal year (FY) budgets each contained a proposal to restrict or eliminate valuation discounts on transfers of interests in family-controlled entities.[14]

The proposal was dropped from the FY 2014 through FY 2016 budgets. This is most likely due to a renewed focus to issue regulations under the existing Section 2704(b)(4) rather than attempt to pass new legislation through an increasingly divided congress.[15]

The FY 2013 budget proposed creating an additional category of restrictions ("disregarded restrictions") which would be ignored in valuing ownership interests in family-controlled entities transferred to family members if, after the transfer, the restriction would lapse or may be removed by the transferor and/or the transferor's family (including certain charities and nonfamily members).

The transferred ownership interest would instead be valued by substituting certain assumptions (to be specified by the regulations) for the disregarded restrictions.[16]

The FY 2013 budget proposal provided that such disregarded restrictions would include limitations on a holder's right to liquidate that holder's ownership interest—thus, they would be more restrictive than a standard to be specified by the regulations.

Any limitation on a transferor's ability to be admitted as a full partner or to hold an equity interest in the entity would also be considered a disregarded restriction.[17]

The FY 2013 budget proposed to grant regulatory authority for various purposes, including the creation of safe harbors under which the governing documents of a family-controlled entity could be drafted to avoid the application of Section 2704. The proposal further included conforming changes relating to the interaction of the proposal with the marital and charitable deductions.[18]

The Service is understandably disgruntled by some of the valuation reports that it has to review as support for taxpayer's positions in interfamily transactions. The Service sees some of the worst examples of tax abuse in this area.

Many professional firms have expanded in recent years into the valuation services practice area. This has led to novice valuation reports that are not well supported. In order to rectify this apparent abuse within the valuation profession, the Service seemingly would like to do away with valuation discounts within the trust and estate tax arena.

So until any proposed regulations are issued, many estate planners are quickly structuring FLP transactions prior to the imminent proposed regulations. However, these transactions (either by sale or gift) include many additional clauses that limit, to some extent, the effect of any retroactive regulation effects.

These structuring provisions include the following:

- Dollar value transfers. Dollar value transfers are defined transfers (either by sale or gift) on a certain date; wherein, the percentage interest transferred is determined after a valuation is performed.
- Valuation formula adjustment clause. In case the Service amends the value of the transferred interest, the transaction document will change the percentage of ownership transferred rather than incur an effective gift of ownership.[19]
- Charitable value allocation clause. In case the Service amends the value of the transferred interest, the transaction document will provide that any determined additional gift amount will be transferred to a defined charity (in which case, the Service will not receive additional tax revenue, if any, upon a change in the value of the interest transferred).

The Valuation Analyst's Role

The valuation analyst plays an important role in meeting compliance standards with family-controlled FLP interest transfers between family members. Many of the apparent abuses with respect to Section 2704 are a result of poorly structured and poorly supported valuation reports.

The valuation analyst should:

1. assist in compliance with properly documenting the taxpayer's position,
2. provide experience and expertise in valuing hard to value assets, and
3. provide independence with respect to interfamily transfers.

The valuation of an FLP interest should meet requirements of a "qualified appraisal" prepared by a "qualified appraiser" under Section 170(f)(11)(E)(ii).

According to Section 170, a qualified appraisal is one that:

1. meets the regulations and guidance prescribed by the Secretary of the Treasury (the "Secretary") and
2. is conducted by a qualified appraiser in accordance with generally accepted appraisal standard and any regulations or other guidance prescribed within the section.

The only generally accepted appraisal standard specifically mentioned by the Service is the Uniform Standard of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

According to Section 170, a qualified appraiser is defined as an individual who:

1. has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary,
2. regularly performs appraisals for which the individual receives compensation, and
3. meets such other requirements as may be prescribed by the Secretary in regulations or other guidance.

Valuation analysts should also meet the Service's "adequate disclosure" requirements for taxpayers to begin the statute of limitations as set forth in Treasury Regulations Section 301.6501(c)-1(f)(3).

For charitable contribution purposes, adequate disclosure for valuations is satisfied if the donor submits a valuation of the transferred property that meets the following requirements:

1. The appraisal is prepared by an appraiser who satisfies all of the following requirements:
   a. The appraiser is an individual who holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis.
   b. Because of the appraiser's qualifications, as described in the appraisal that details the appraiser's background, experience, education, and membership, if any, in professional appraisal associations, the appraiser is qualified to make appraisals of the type of property being valued.
   c. The appraiser is not the donor or the donee of the property or a member of the family of the donor or donee, as defined in Section 2032A(e)(2), or any person employed by the donor, the donee, or a member of the family of either.
2. The appraisal contains all of the following:
   a. The date of the transfer, the date on which the transferred property was appraised, and the purpose of the appraisal
   b. A description of the property
   c. A description of the appraisal process employed
   d. A description of the assumptions, hypothetical conditions, and any limiting conditions and restrictions on the transferred property that affect the analyses, opinions, and conclusions
   e. The information considered in determining the appraised value, including in the case of an ownership interest in a business, all financial data that was used in determining the value of the interest that is sufficiently detailed so that another person can replicate the process and arrive at the appraised value
   f. The appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions
   g. The valuation method utilized, the rationale for the valuation method, and the procedure used in determining the fair market value of the asset transferred
   h. The specific basis for the valuation, such as specific comparable sales or transactions, sales of similar interests, asset-based approaches, merger-acquisition transactions, and so on.

In addition to the compliance-related requirements, a valuation analyst and a valuation firm can provide taxpayers with additional support and defense in case the transfer is audited by the Service. Professional valuation firms should defend their work under contrarian review.

Taxpayers who engage professional advisers can mitigate or eliminate underpayment penalties, fines, and drawn-out, expensive audits.

Issues with the Proposed Regulations

There are numerous unintended consequences of the to-be-proposed Section 2704 regulations. Some of the issues that are not considered in these assumed regulations follow:

1. The market does not support undiscounted values of limited partnership interests.
2. Families do not always get along.

The Market Issue

When valuing a privately held business interest, valuation analysts often start with an examination of public and private market transactions of securities with the same or a similar set of restrictions.

Often, valuation analysts can identify similar securities that assist in creating a proxy of risk attributable to investment concerns that can be grouped into two areas: lack of control risk factors and lack of marketability risk factors.

These risk factors are often represented as a price discount from the net asset value of the underlying assets of the FLP. These price discounts provide the investor a greater level of assurance that their investment will yield a suitable rate of return upon selling.

These price discounts can be jointly supported through a hypothetical scenario test to understand the likely internal rate of return (IRR) of the investment over the investment horizon. Comparable market investments can assist in understanding what is a suitable IRR for a subject investment interest.

FLP investments are typically not attractive investments or especially unique in any manner. For most FLPs, the underlying assets are investments in cash, bonds, marketable securities, privately held securities, real estate, and debt instruments.

Furthermore, from an arm's-length transaction perspective, the transferee cannot look to sell its interest to all buyers and sellers at a price not discounted substantially from the aggregate fair market value of the FLP underlying assets.

Otherwise, the buyer would simply use his or her own capital to buy similar investments (if not the same investments) as the FLP, retaining control of the investments and having the ability to liquidate on his or her own terms.

Lack of Ownership Control Issues

If the analyst examines publicly traded closed-end funds, the majority (95 percent) trade at discounts from their net asset values. Closed-end funds are similar to FLP limited partnership interests. Investors of each lack control of the underlying assets invested by the entity.

The majority of the discount associated with the closed-end fund trading price is due to lack of ownership control; only a small amount of the discount is often associated with lack of liquidity due to low volume of transactions and market participants, which also yields a large spread between bid and ask prices.

Most publicly traded closed-end funds trade at an 8–20 percent price discount due to characteristics of lack of control.

The following list provides examples of some of the more common prerogatives of ownership control in an FLP entity:

- Elect directors and appoint management
- Determine management compensation and perquisites
- Set policy and change the course of business
- Acquire or liquidate assets
- Select people with whom to do business and award contracts
- Make acquisitions
- Liquidate, dissolve, sell out, or recapitalize the partnership
- Sell or acquire partnership
- Register the partnership's interests for public trading
- Declare and pay distributions
- Change the partnership agreement

Lack of Marketability Issues

In addition to lack of control issues, the lack of marketability of a privately held, family-controlled FLP creates negative characteristics. Most FLP limited partnership interests are discounted between 20 percent and 35 percent for lack of marketability.

This price discount, based on a likely investment time horizon (e.g., 10 years), provides the holder a return (modeled by applying an IRR calculation) commiserate with the risks the investor is taking on in the subject investment.

In *Mandelbaum v. Commissioner*,[20] Judge David Laro cited nine specific (but nonexclusive) factors for analysts to consider in developing a discount for lack of marketability (DLOM):

1. Financial statement analysis
2. Dividend history and policy
3. Nature of the company, its history, its position in the industry, and its economic outlook
4. The company management
5. The amount of control in the transferred shares
6. The restrictions on transferability
7. The holding period for the stock
8. Subject company's redemption policy
9. Costs associated with a public offering

Mandelbaum is cited frequently in decisions related to the measurement of the DLOM. The *Mandelbaum* factors are intuitive, and they reconcile with empirical studies such as the restricted stock studies and the pre-initial public offering studies.

Analyses of the *Mandelbaum* factors, the empirical studies, the theoretical studies, and other DLOM literature make it clear that many company-specific and security-specific factors affect the magnitude of the DLOM.

These types of factors generally fall into three categories:

1. Dividend payments
2. Expected holding period
3. Subject company risk

Market participants must (and do) consider control and marketability risks with an investment in a limited partnership interest of an FLP. These price discounts typically range from 25 to 45 percent of the net value of equity of the FLP. They are supported by market transactions of like private investments and rates of return iterations often modeled in connection with the valuation of FLP interests.

The consideration of substitution or alternative investments with similar level of risks bear upon the discount required of an investor from the net asset value of a typical FLP entity.

The Family Issue

No family functions perfectly. Disagreements and divorce also affect high net worth families, and when significant money is involved, disagreements and divorce lead to very expensive and time-consuming litigation. Situations such as siblings fighting over an inheritance, parents trying to instill middle-class values in their children, and ex-wives fighting over alimony often create tumult.

One aspect of an FLP is to assist high net worth families in controlling family wealth generationally, protecting it from creditors, former spouses, publicity, and theft. Often, the senior generation will maintain custodial control of the FLP assets via the powers of being the general partner(s) until their death.

During the parent's life, the most an heir is often benefited by ownership of an FLP limited partnership interest is through the distributions, if any, made by the FLP by action of the general partner(s).

In addition to lack of ownership control, the child (i.e., the limited partner) is often unable to sell its partnership interest, due to either numerous restrictions on transfers or lack of market liquidity as a privately held and risky, unattractive investment interest.

This lack of control and lack of marketability, among others, is one reason why large fortunes typically cause discontent within families. Where at one time there may have been mutually beneficial terms and actions within an FLP structure among family members, things change, and family issues can turn very quickly once cordial actions break down.

For example, in *Pritzker v. Pritzker*, 19-year-old daughter Liesel Pritzker filed a $6 billion lawsuit against her father Robert Pritzker and 11 older cousins, accusing them of looting her trust funds and those of her 21-year-old brother, Matthew. The action focused unwanted attention on deep divisions tearing apart the once obsessively private family worth an estimated $15 billion.[21]

"One aspect of an FLP is to assist high net worth families in controlling family wealth generationally, protecting it from creditors, former spouses, publicity, and theft."

If an FLP structure was initially involved providing some "structured" economic benefit to the daughter by virtue of the general partner (i.e., Robert Pritzker), one can be ensured those economic benefits would quickly evaporate and discontinue.

This structuring would leave the limited partner (i.e., Liesel Pritzker) with a noncontrolling, illiquid, and nonmarketable interest that would be taxed as if the limited partner had full rights and use of the asset.

If Ms. Pritzker now wanted to sell her FLP interest, would she expect 100 cents on the dollar? Or, would she expect to receive substantially lower than par value for the risks the buyer (defined in Revenue Ruling 59-60 as a hypothetical (i.e., third-party) buyer) is now assuming for lack of control and lack of marketability?

Conclusion

Long-standing interpretations of Section 2704 by the Tax Court, market-based transactions of similar investment interests, family dynamics, and business motivations for interfamily transfers support valuation discounts. The speculated Section 2704 to-be-proposed regulations will end up causing significant undue hardships on investors in FLPs.

Rather than issuing highly contentious, proposed regulations regarding Section 2704 in order to correct the poor behavior of some taxpayers (and their professional advisers, more importantly), the Service should initially consider releasing a Job Aid on the topic to encourage open debate.

A Job Aid is not an official Service position, but it represents the Service's current thinking and acts as a reference for Service reviewers.

A Job Aid on family-owned FLP interest transfers (similar to the Job Aid issued on DLOM in September 2009 and on S corporation tax affecting in October 2014) would provide clarity and understanding of the Service's stance without creating significant disputes between taxpayers, their advisers, and the Service's agents, saving the Service time and taxpayer money in attempting to pass and then properly enforce its regulations.

Notes:

1. Steve Akers, Bessemer Trust estate planning webcast presentation, November 16, 2015).
2. Ibid.
3. Marty McKeever, "The Family Limited Partnership," *Estate Planning* (June 2, 1999, updated May 18, 2011).
4. Ibid.
5. Ibid.
6. Andy Dzamba, "IRS Crackdown Looms on Valuation Discounts for FLPs," *BVWire News* (August 17, 2015).
7. "Business Valuations for Estate and Gift Tax Purposes," draft white paper, American Institute of Certified Public Accountants Business Valuation Committee and Forensic and Valuation Services Executive Committee, November 2014, p. 12.
8. Estate of Bongard v. Commissioner, 124 T.C. No. 8, (March 15, 2005).
9. Rector v. Commissioner, T.C. Memo 2007-367 (December 13, 2007).
10. Rosen v. Commissioner, T.C. Memo 2006-170 (August 16, 2006).
11. Bigelow v. Commissioner, T.C. Memo 2005-65 (March 30, 2005).
12. Steve R. Akers, "Family Limited Partnership Planning Current Developments," Bessemer Trust Company (November 17-21, 2008).
13. Gary Ringel, "Could New Section 2704 Regulations Eliminate Discounts Applicable to Transferred Interests in Family Owned Entities?," Henry & Horne, LLP, blog (June 30, 2015), www.hhcpa.com.
14. Tracy Thomas Stone, "Pending Proposed Regulations May Limit Valuation Discounts on Interests in Family Entities," KPMG LLP (June 23, 2015), www.kpmg.com.
15. Ibid.
16. Ibid.
17. Ibid.
18. Ibid.
19. See Wandry v. Commissioner, T.C. Memo 2012-88 (March 26, 2012) for more detail regarding valuation formula adjustment clauses.
20. Mandelbaum v. Commissioner, T.C. Memo 1995-255 (June 13, 1995).
21. Stephanie Fitch, "Pritzker Vs. Pritzker," Forbes.com (November 24, 2003).

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IRS Job Aid

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4. Gross v. Commissioner, T.C. Memo 1999-254, *aff'd* 272 F.3d 333 (6th Cir. 2001).
5. Wall v. Commissioner, T.C. Memo 2001-75 (March 27, 2001).
6. Heck v. Commissioner, T.C. Memo 2002-34 (February 5, 2002).
7. Adams v. Commissioner, T.C. Memo 2002-80 (March 26, 2002).
8. Dallas v. Commissioner, T.C. Memo 2006-212 (September 18, 2006).
9. Estate of Gallagher v. Commissioner, T.C. Memo 2011-148 (June 28, 2011).
10. Estate of Giustina v. Commissioner, No. 12–71747 2014 U.S. App. Lexis 22961 (9th Cir. December 5, 2014), *rev'g and remanding* T.C. Memo 2011-241 (June 22, 2011).
11. S Corp Job Aid, 4.
12. Ibid., 20.
13. Ibid., 7.
14. Merle M. Erickson and Shiing-wu Wang, "Tax Benefits as a Source of Merger Premiums in Acquisitions of Private Corporations," *The Accounting Review* 82, No. 2, (2007): 359–387.
15. David Denis and Atulyaa Sarin, "Taxes and the Relative Valuation of S Corporations and C Corporations," *Journal of Applied Finance* (Fall/Winter 2002): 7–16.
16. Michael A. Gregory, *How the IRS Values Non-Controlling Interests in S-Corps: With Job Aid Commentary by the Original IRS Champion* (Roseville, MN; Birchgrove Publishing, 2015), 39–65.
17. Delaware Open MRI Radiology Associates, P.A. v. Kessler, 898 A.2d 290 (Del. Ch. 2006).
18. Nancy J. Fannon and Keith F. Sellers, *Taxes and Value: The Ongoing Research and Analysis Relating to the S Corporation Valuation Puzzle* (Portland, OR: Business Valuation Resources, 2015), 87–96, 153–54.
19. Shannon P. Pratt and Roger J. Grabowski, *Cost of Capital: Applications and Examples*, 5th ed. (New York: John Wiley & Sons, 2014), Chapter 29.

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