Thought Leadership

The 2011 Proposed Alternate Valuation Date Regulations

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The alternate valuation date provides relief from estate taxes if the fair market value of the assets held by the estate has declined during the six-month period following the date of death. In late 2011, the Internal Revenue Service issued proposed regulations that were intended to discourage taxpayers from avoiding taxes by voluntarily maneuvering the estate's assets during the six-month period. The 2011 proposed regulations need considerable refinement and change in order to achieve their apparent goals and to be workable for taxpayers.

Introduction

As a general rule, assets included in a deceased taxpayer's gross estate are valued for federal estate tax purposes at their fair market values as of the date of the taxpayer's death.[1] However, Internal Revenue Code Section 2032 provides estates with the ability to elect to value each asset as of an alternate valuation date (AVD) if the aggregate value of the estate's assets is less on the alternate date or dates than it was on the date of the taxpayer's death and the election will decrease the sum of the estate tax and generation-skipping transfer tax imposed with respect to the property included in the gross estate.[2]

If the AVD election is made, all of the assets included in the estate, not just those assets that have declined in value, are valued as of the alternate date or dates.

Purpose of the AVD Election

The fundamental purpose of the AVD election is to afford estates relief from taxes based on date-of-death values if those values declined in the months succeeding the taxpayer's death.

Former Treasury Regulations stated that "the purpose of Section 2032 [is] to permit a reduction in the amount of tax that would otherwise be payable if the gross estate has suffered a shrinkage in its aggregate value in the 6 months . . . following the decedent's death."[3]

The legislative history of Section 2032 indicates that one of the congressional purposes of enacting this section was to "eliminate many of the hardships which were experienced after 1929 when market values decreased very materially between the . . . date of death and the date of distribution to the beneficiaries."[4]

More Than One Possible AVD

The alternate dates under an AVD election are determined as follows: If an asset included in a decedent's gross estate is distributed, sold, exchanged, or otherwise disposed of within six months after the decedent's death, it is valued as of the date of the distribution, sale, exchange, or other disposition.

On the other hand, any asset not distributed, sold, exchanged, or otherwise disposed of within six months after the decedent's death is valued as of the date six months after the decedent's death.

The Section 2032 regulations that have been in effect from 1958 through the present define "distributed, sold, exchanged, or otherwise disposed of" very broadly, but except "transactions which are mere changes in form."[5] The regulations cite nonrecognition transactions such as contribution of assets to a corporation in exchange for stock under

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Section 351 and corporate reorganizations under Section 368 as examples of "mere change in form" transactions.

Troubling Interpretations

The "mere change in form" exception, taken at its literal face value, is worrisome to the Internal Revenue Service ("Service"), because it appears susceptible to use as a mechanism for voluntary, postmortem reductions in value. For example, a contribution of assets to a family limited partnership in exchange for limited partnership interests under Section 721 is certainly no less of a "mere change in form" than is a contribution of assets to a corporation in exchange for stock under Section 351.

And, the mere fact of exchanging assets for a limited partnership interest would, after the application of valuation discounts for lack of marketability and lack of control, almost certainly result in the estate holding an asset with a reduced fair market value after the exchange.

Interpretation of the regulations to except all post-death family limited partnership formations from treatment as exchanges would open up a new, and, for the Service, a deeply troubling front in the Service's ongoing war on valuation discounts as applied to family limited partnership interests.

The fear of just this sort of interpretation appears to have been the driver of (1) the Service's alternate valuation date position in *Kohler v. Commissioner*,[6] (2) its subsequently issued nonacquiescence in response to its loss in that case, (3) its issuance of proposed regulations under Section 2032 in 2008, and (4) its withdrawal of the 2008 proposed regulations and issuance of replacement proposed regulations in November 2011.

This discussion summarizes the *Kohler* case, the Service's nonacquiescence, and the 2008 proposed regulations as background. It then examines the portions of the 2011 proposed regulations that are relevant to the meaning of "distributed, sold, exchanged, or otherwise disposed of," as that phrase is used in Section 2032.[7]

The *Kohler* Case[8]

The principal controversy in the *Kohler* case was the federal estate tax valuation of the Kohler Co. stock held by Frederic C. Kohler at his death on March 4, 1998, including the application of the alternate valuation date.

The estate reported the fair market value of that stock (1) as of the date of death as $50.11 million and (2) as of the alternate valuation date of September 4, 1998, as $47.01 million.

During the course of the estate tax controversy, the Service asserted multiple values for the stock, the highest of which was $150 million as of the date of death, an amount nearly $100 million in excess of the value reported.

After Frederic's death, but before the AVD, Kohler Co. adopted a plan of reorganization that was implemented on May 11, 1998. The reorganization had the general effect of cashing out nonfamily shareholders and recapitalizing the stock held by electing family shareholders.

The corporate reorganization was outside the control of Frederic or his personal representative. The estate had no choice but to either (1) be cashed out or dissent, both of which were against the wishes of the beneficiaries of the estate, or (2) have its stock recapitalized in the reorganization. The estate had no power either to initiate or to block the reorganization.

The estate elected to participate in the reorganization and exchanged its stock in the reorganization for new shares of Kohler Co. stock having the same value. The new shares were subject to transfer restrictions and a purchase option. These contractual provisions would ensure the continued ownership and control of Kohler Co. by family shareholders and related entities.

The fair market value of the estate's stock had increased by approximately $1.2 million during the period between the date of Frederic's death and the date of the reorganization. After the date of the reorganization, during the summer of 1998, the stock market suffered a generalized, precipitous decline that negatively affected the value of Kohler Co. stock. The decline in the value used by the estate between May 11, 1998, and September 4, 1998, was the result of the market decline during that period, not the result of the transfer restrictions.

On the alternate valuation date of September 4, 1998, Frederic's estate continued to hold the post-reorganization shares subject to the transfer restrictions. Because the assets included in the estate, which consisted principally of the stock, were worth less on that date than on the date of

death, the estate elected to apply the alternate valuation date.

The Appropriate Valuation Date

With respect to the appropriate valuation date, the Service argued in the alternative that either (1) the transfer restrictions that applied to the post-reorganization shares should be disregarded in valuing the stock on the alternate valuation date or (2) the reorganization itself should be disregarded and the pre-reorganization stock should be valued on the alternate valuation date.

Either of these options would have required the valuation of hypothetical securities. The estate countered by arguing that the reorganization, which was a tax-free merger and recapitalization, was expressly covered by the "mere change in form" exception under the regulations and that the post-reorganization stock was the appropriate asset to be valued on the alternate valuation date, taking into account all of the relevant facts, including the transfer restrictions and purchase option.

The Tax Court agreed with the estate, citing the Section 2032 regulations specification that "'otherwise disposed of' does not include transactions under section 368(a) where no gain or loss is recognizable," and valued "the post-reorganization stock on the alternate valuation date, including the transfer restrictions and the purchase option."[9]

The Tax Court noted that the Service had stipulated (1) that the reorganization qualified as a tax-free reorganization under Section 368 and (2) that "the fair market value of the post-reorganization stock must generally equal the fair market value of the pre-reorganization stock for the reorganization to be tax free."[10]

The Tax Court issued an opinion in July 2006 upholding the $47.01 million reported value of the Kohler Co. stock without change.

The Service's Nonacquiescence

Rather than appeal, the Service issued an Action on Decision in March 2008, announcing its nonacquiescence in the decision of the Tax Court in *Kohler*. The Service reasoned that "the court erred in focusing on whether a disposition had occurred rather than on whether it should take into account a change in the character of the property that had occurred during the alternate valuation period," and argued that "Section 20.2032-1(c)(1) addresses what constitutes a disposition for purposes of determining when to value property . . . not the character of the property to be valued."

The Service concluded that "the court should have ignored changes in the character of the [Kohler Co.] stock due to the post-death restrictions in determining the value of the stock on the alternate valuation date."

2008 Proposed Regulations

Soon after the nonacquiescence, the Service issued proposed regulations under Section 2032 in April 2008. The 2008 proposed regulations adopted the rule that the "election to use the alternate valuation method under Section 2032 permits the property included in the gross estate to be valued as of the alternate valuation date to the extent that the change in value during the alternate valuation period is the result of market conditions. . . . Changes in value due to mere lapse of time or to other post-death events other than market conditions will be ignored in determining the value of decedent's gross estate under the alternate valuation method."[11]

"Market conditions" was defined as "events outside of the control of the decedent (or the decedent's executor or trustee) or other person whose property is being valued that affect the fair market value of the property being valued."[12]

Although the proposed regulations were drafted in response to the *Kohler* opinion, they would not have changed the result in *Kohler*. The decline in value that allowed the estate to use the alternate valuation date resulted from a market decline that occurred during the summer of 1998.

The fair market value of the estate's stock increased during the period between the date of Frederic's death and the date of the reorganization, remained exactly the same immediately before and immediately after the reorganization, and declined thereafter. The change in the value of the stock during the alternate valuation period fell squarely into the 2008 proposed regulations' definition of "market conditions."

The 2008 proposed regulations were broadly criticized. Commentators, including this author, raised questions about (1) whether "market conditions," as defined by the proposed regulations, was an appropriate standard and (2) whether the approach of ignoring certain post-death changes and valuing hypothetical, nonexistent assets on the alternate valuation date was even workable.

In view of the comments, the Service withdrew the 2008 proposed regulations and, on November 18, 2011, issued replacement proposed regulations.

2011 Proposed Regulations

The 2011 proposed regulations move away, at least in part, from the "market conditions" standard toward a more specific articulation of what constitutes a distribution, sale, exchange, or other disposition. They also make very substantial changes to the longstanding "mere change in form" exception. The portions of the proposed regulations summarized in this discussion will be applicable to estates of decedents dying on or after the date the regulations are finalized, if at all.[13]

Definition of "Distributed, Sold, Exchanged, or Otherwise Disposed Of"

The 2011 proposed regulations retain the broad, general statement that "'distributed, sold, exchanged, or otherwise disposed of' comprehends all possible ways by which property ceases to form a part of the gross estate."[14] This general definition is followed by nine subparagraphs, which describe specific types of transactions that constitute distributions, sales, exchanges, or other dispositions. Those subparagraphs (designated in the proposed regulations as Subparagraphs (A) through (I)) are quoted with minor omissions as follows:[15]

> (A) The use of money on hand at the date of the decedent's death to pay funeral or other expenses of the decedent's estate;
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> (B) The use of money on hand at the date of the decedent's death to invest in other property;
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> (C) The exercise of employee stock options;
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> (D) The surrender of stock for corporate assets in partial or complete liquidation of a corporation, and similar transactions involving partnerships or other entities;
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> (E) The distribution by the estate (or other holder) of included property . . . ;
>
> (F) The transfer or exchange of property for other property, whether or not gain or loss is currently recognized for income tax purposes;
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> (G) The contribution of cash or other property to a corporation, partnership, or other entity, whether or not gain or loss is currently recognized for income tax purposes;
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> (H) The exchange of interests in a corporation, partnership, or other entity (entity) for one or more different interests (for example, a different class of stock) in the same entity or in an acquiring or resulting entity or entities . . . ; and
>
> (I) Any other change in the ownership structure or interests in, or in the assets of, a corporation, partnership, or other entity, an interest in which is includible in the gross estate, such that the included property after the change does not reasonably represent the included property at the decedent's date of death. . . . Such a change in the ownership structure or interests in or in the assets of an entity includes, without limitation—
>
> > (1) The dilution of the decedent's ownership interest in the entity due to the issuance of additional ownership interests in that entity;
> >
> > (2) An increase in the decedent's ownership interest in the entity due to the entity's redemption of the interest of a different owner;
> >
> > (3) A reinvestment of the entity's assets; and
> >
> > (4) A distribution or disbursement of property . . . by the entity (other than expenses, such as rents and salaries, paid in the ordinary course of the entity's business), with the effect that the fair market value of the entity before the occurrence does not equal the fair market value of the entity immediately thereafter.[16]

Analysis of Subparagraphs (A) through (I)

Subparagraphs (A), (B), and (D) appear in nearly identical form in the existing final regulations and subparagraphs (C), (E), and (F) are unsurprising applications of the current rules. Subparagraphs (G), (H), and (I), however, represent meaningful and, in some cases, problematic changes.

Problems with Subparagraph (G)

Subparagraph (G), which indicates that contributions of assets to business entities in exchange for equity interests will be treated as dispositions,

directly overrides an expressly sanctioned application of the "mere change in form" exception that has appeared in the regulations since 1958. For more than 50 years, the regulations have provided that the term "otherwise disposed of" does not include "a transfer of assets to a corporation in exchange for its stock in a transaction with respect to which no gain or loss would be recognizable for income tax purposes under section 351."

Subparagraph (G) provides the direct opposite. The 2011 proposed regulations make no express exception to Subparagraph (G)—a contribution of property to a corporation in exchange for stock is always a disposition, whether or not gain or loss is recognizable and whether or not the stock received has the same value as the contributed property.

Although this is certainly a change in the text of the regulations, it is not surprising. Very few, if any, practitioners would have been willing, even before the issuance of the 2011 proposed regulations, to give a client comfort that a value reduction arising as a result of the contribution of assets to a corporation or partnership in exchange for equity interests would be taken into account for alternate valuation purposes.

Problems with Subparagraph (H)

Subparagraph (H), which indicates that an exchange of equity interests in a business entity for other equity interests in the same or a different business entity will be treated as a disposition, likewise overrides an expressly sanctioned application of the "mere change in form" exception. Unlike Subparagraph (G), however, it is accompanied by a new exception.[17]

An exchange that would otherwise be a disposition under Subparagraph (H) will not be treated as a disposition "if, on the date of the exchange, the fair market value of the interest in the entity equals the fair market value of the interest(s) in the same entity or the acquiring or resulting entity or entities."[18] The proposed exception thus endorses the result in the *Kohler* case, despite the Service's earlier nonacquiescence, given that the stock the estate received in the reorganization had the same value as the stock it exchanged.

This proposed exception is narrower in some respects than the existing "mere change in form" exception, in that, by its terms, it applies only to exchanges of equity interests in business entities. The scope of the existing exception is less than entirely clear. It appears, however, to have the potential to apply to assets other than equity interests in business entities.

The proposed exception is also broader than the existing "mere change in form" exception, in that it appears to apply to exchanges of interests in business entities whether or not gain or loss would be recognizable for income tax purposes in the exchange. The existing exception applies only if no gain or loss is recognizable.

Problems with Subparagraph (I)

Subparagraph (I) is a catch-all that picks up "any other change in the ownership structure or interests in, or in the assets of [a business entity] . . . such that the included property after the change does not reasonably represent the included property at the decedent's date of death." It goes on to provide four types of changes that are included in the catch-all, including (1) dilution as the result of the issuance of additional ownership interests, (2) an increase in the ownership interest as a result of a redemption of interests from another owner, (3) the reinvestment of the entity's assets, and (4) a distribution that affects the value of the entity.

Even though the exception to Subparagraph (H) seems to point directly at the *Kohler* facts and appears to endorse the Tax Court's decision in *Kohler*, it is unclear whether the *Kohler* facts could nonetheless be treated as a disposition under Subparagraph (I). The Kohler Co. reorganization involved redemptions of interests from other owners and the distributions made in those redemptions necessarily affected the value of the remaining shares in the company.

In addition to its confusing application to the *Kohler* facts, Subparagraph (I) is problematic for several other reasons.

First, it treats as distributions, sales, exchanges, or other dispositions a variety of changes that do not, in any ordinary use of those words, constitute distributions, sales, exchanges, or dispositions. An effective increase in a decedent's proportionate ownership interest in a corporation that results from the corporation's redemption of the stock of another shareholder cannot reasonably be said to involve the distribution of the stock held by the estate, a sale or exchange of that stock, or a disposition of the stock in the standard usage of those terms.

Each of the words "distribution," "sale," 'exchange," and "disposition" imply some break with the estate's possession or ownership of the shares. But in the context of the redemption of another shareholder's stock, the estate would have continuous, uninterrupted possession of precisely the same shares that were held by the decedent both before and after the redemption. Because the

proposed regulation interprets the words used by Congress in the Internal Revenue Code in a manner that is outside of the bounds of what those words generally mean, it seems questionable whether Subparagraph (I), if finalized, would survive a taxpayer challenge.

Second, Subparagraph (I) can be interpreted to provide that any instance of dilution, increase in ownership because of a redemption, reinvestment, or distribution that affects value will invariably be treated as a disposition. It states that any "change . . . such that the included property after the change does not reasonably represent the included property" is a disposition and that "[s]uch a change . . . includes, without limitation" each of the four specified types of exchanges.

If by this language the Service intends, for example, that literally any reinvestment of a corporation's assets must be treated as a disposition, this would appear to mean that an estate that is a tiny minority shareholder in a publicly traded corporation will be treated as disposing of the stock of the corporation if the corporation uses some of its cash to acquire another company during the alternate valuation period.

It would appear to mean that an estate holding a minority interest in a privately held corporation will be treated as disposing of the stock of that corporation if the corporation completes an isolated redemption from another shareholder of one percent of the corporation's outstanding stock during the alternate valuation period. The same result would seem to apply in the case of an estate holding stock in a public company that implements a stock buyback plan.

It seems inconceivable that Congress envisioned these types of circumstances as "dispositions." It also seems an undue burden to place on an estate that holds a minority interest in a business entity to track and monitor all issuances and redemptions of equity interests, all reinvestments, and all distributions made by the entity.

Third, Subparagraph (I) does not differentiate between changes that are caused by an estate from changes that occur without the estate's ability to cause or block them. If an estate voluntarily causes a value reducing dilution, redemption, reinvestment, or distribution to occur during the alternate valuation period, perhaps a rationale exists for treating that change as a disposition. It is difficult to understand, however, how an event wholly outside of the control of the estate that has no direct effect on the estate's ownership and possession of the equity interest included in the estate could reasonably be treated as a disposition of the equity interest.

Finally, the fourth specific type of change identified in Subparagraph (I), a "distribution or disbursement of property . . . by the entity . . . with the effect that the fair market value of the entity before the occurrence does not equal the fair market value of the entity immediately thereafter," has the potential to yield manifestly unfair results.

The proposed regulation calls for the valuation of a disposed of asset immediately before the disposition. Suppose that the "disposition" was a large corporate dividend distributed to all shareholders, including an estate that holds stock, and that the estate continued to hold the dividend it received as of the date six months after the decedent's death. Subparagraph (I)'s fourth example would appear to require the aggregate alternate valuation date value to include both the value of the stock immediately before the payment of the dividend and the dividend that the estate still holds on the date six months after the decedent's death. This appears to double count the value of the dividend.

Because of all of the foregoing, Subparagraph (I) should not be included in any final regulations.

"Economic or Market Conditions" Catch-All

The 2011 proposed regulations contain a second catch-all provision of actions that would be treated as dispositions in addition to Subparagraph (I). The second catch-all is based on a revised version of the "market conditions" standard that appeared in the 2008 proposed regulations. It provides that to the extent that "management decisions made in the ordinary course of operating a business" have the effect of "chang[ing] the ownership or control structure of the business entity" or could otherwise be included in the circumstances described in

Subparagraphs (A) through (I), they will be treated as a disposition.[19]

The variation on the "market conditions" standard appears in the background for the rule, which states that an alternate valuation date election "permits a valuation for Federal estate tax purposes that reflects the impact of factors such as economic or market conditions, occurrences described in Section 2054 . . . , and other factors and occurrences during the alternate valuation period."[20] Management decisions in the ordinary course are expressly included in this category unless they change the ownership or control structure.[21] If they do, even if they are made in the ordinary course of business, the decisions will be treated as dispositions.

Like Subparagraph (I), this second catch-all encompassing management decisions that change the ownership or control structure is difficult, at best, to reconcile with the language of Section 2032 and should not be included in final regulations. The preamble to the proposed regulations does not provide any rationale for why a management decision that is outside of the control of an estate, in which the estate does not participate, and that does not cause any disruption of the estate's possession or ownership of its equity interest in the business could reasonably be characterized as a "distribution, sale, exchange, or other disposition." It is also unclear what management decisions would fall into this second catch-all that would not already have been picked up by Subparagraph (I).

As discussed earlier with respect to Subparagraph (I), although the Subparagraph (H) exception seems tailor-made to serve as a basis for concluding that the *Kohler* facts should not have been treated as a disposition, this second catch-all may cover the management decision to carry out the reorganization, which clearly changed the ownership structure and arguably changed the control structure of the company.

Proposed Aggregation Rule

The 2011 proposed regulations contain a special aggregation rule that would apply in situations in which one or more partial interests in property included in the gross estate are distributed, sold, exchanged, or otherwise disposed of during the alternate valuation period. They provide that if one or more partial interests are disposed of during the alternate valuation period, neither any of them nor the remaining portion of the property, if any, will be valued independently. Instead, all will be valued strictly as a percentage of the value of the whole asset that existed and was included in the decedent's gross estate on the date of death.

In other words, the fair market value of each partial interest, whether it was disposed of or whether it remains in the gross estate at the end of the alternate valuation period, will be calculated by multiplying (1) the fair market value of the entire asset as of the date of the relevant AVD by (2) the percentage of the entire asset includible in the gross estate constituted by the portion of the interest to be valued on that date. This procedure poses two serious problems.

First, the aggregation rule reintroduces the problem present in the 2008 proposed regulations of the need to value a nonexistent, hypothetical asset. Suppose the asset in question was 100 percent of the stock in a private corporation and that corporation was merged into a public corporation in a tax-free, stock-for-stock exchange three months after the date of the decedent's death. Subsequently, the price of the public corporation begins to decline. Suppose the estate then sold the publicly traded stock it received in multiple blocks on a national securities exchange over the remaining three months of the alternate valuation period.

The proposed regulation would appear not to treat the stock-for-stock exchange as a disposition and would appear to require the estate to calculate the value of each of the sales of the blocks of publicly traded stock not by simply using the sale price. Instead, the estate would hypothetically extract the pre-merger corporation from the publicly traded corporation's corporate solution. The estate would hypothetically calculate the fair market value of that now nonexistent enterprise as a whole, and then use a percentage of that hypothetical value as the fair market value for alternate valuation purposes. This is not a workable rule.

Second, and perhaps more important, the proposed aggregation rule is fundamentally inconsistent with the fair market value standard. The valuation standard of fair market value requires the consideration of the price at which a specific asset would change hands between a hypothetical buyer willing to purchase the asset and a hypothetical seller willing to sell it. The focus is solely on the specific asset being transferred, not on a percentage of a hypothetical re-aggregated asset.

Historically, the Service had pushed in certain circumstances for the application of aggregation principles. The Service was, however, routinely unsuccessful, and it appeared to have abandoned the concept for almost 20 years.[22] The aggregation concept should not be reintroduced as part of the Section 2032 regulations and, if it is, should not withstand a taxpayer challenge.

> **"The 2011 proposed regulations . . . provide an overinclusive definition of the universe of transactions that constitute distributions, sales, exchanges, or other dispositions in lieu of identifying clearly the problem that the proposed regulations attempt to solve."**

Summary and Conclusion

The Kohler decision propelled the Service to attempt to clarify and change the longstanding Section 2032 regulations with the problematic 2008 proposed regulations. The Service has appropriately withdrawn those regulations and has proposed the 2011 regulations in their place. At least parts of the 2011 proposed regulations reflect improvements on the 2008 proposed regulations. The 2011 proposed regulations nonetheless need considerable refinement and change in order to achieve their apparent goals and to be workable for taxpayers.

The principal fault of the 2008 proposed regulations was their underinclusive definition of the universe of changes in value that would be taken into account for alternate valuation date purposes (solely those caused by "market conditions") instead of an identification in principle of the types of changes in value that would not be taken into account (tax avoidance motivated voluntary acts that cause value reductions).

The 2011 proposed regulations proceed in a different direction, but unfortunately yield the same fundamental result. They provide an overinclusive definition of the universe of transactions that constitute distributions, sales, exchanges, or other dispositions in lieu of identifying clearly the problem that the proposed regulations attempt to solve. The 2011 proposed regulations further add a new flaw by proposing an unworkable aggregation rule that is directly contrary to the fair market value standard that applies under Section 2032 and for all other estate tax purposes.

Notes:

1. Section 2031.
2. Section 2032.
3. Former Treasury Regulations Section 20.2032-1(b)(1) (substantially similar purpose statement was present in the regulation from 1958 through 2005).
4. 70 Cong. Rec. 14632 (1935).
5. Treasury Regulations Section 20.2032-1(c)(1), originally adopted as T.D. 6296, 23 Fed. Reg. 4529 (1958).
6. 92 T.C.M. (CCH) 48 (2006) (T.C. Memo. 2006-152).
7. This discussion does not comprehensively describe the November 2011 proposed regulations. For example, we do not discuss issues that were not implicated in the *Kohler* case, such as changes in the proposed regulations that deal with the effect of a postmortem grant of a conservation easement (which are to be valued on the alternate date), the effect of retitling an account in the name of the new account owner (which is to be valued on the alternate date), the effect of dividing a trust or account into subaccounts for multiple beneficiaries (which also are to be valued on the alternate date), etc.
8. Robert Schweihs prepared the appraisal reports used to determine the reported values and testified in the Tax Court trial in a successful defense of those reports. Nathan Honson was part of the Dorsey & Whitney LLP team that represented Frederic's estate throughout the estate tax controversy.
9. Kohler, 92 T.C.M. (CCH) at 54.
10. Kohler, 92 T.C.M. (CCH) at n.7.
11. Proposed Regulations Section 20.2032-1(f)(1) (2008).
12. Id.
13. Proposed Regulations Section 20.2032-1(h) (2011).
14. Proposed Regulations Section 20.2032-1(c)(1)(i) (2011).
15. Proposed Regulations Section 20.2032-1(c)(1)(i) (A)-(I) (2011).
16. Id.
17. The current regulations provide that "an exchange of stock or securities in a corporation for stock or securities in the same corporation or another corporation in a transaction, such as a merger, recapitalization, reorganization, or other transaction described in Section 368(a) or Section 355, with respect to which no gain or loss is recognizable for income tax purposes under Section 354 or 355" is not a disposition. Treasury Regulations Section 20.2032-1(c)(1).
18. Proposed Regulations Section 20.2032-1(c)(1) (ii) (2011).
19. Proposed Regulations Section 20.2032-1(f) (2011).
20. Id.
21. The proposed regulations also restate the Section 2032 rule that value changes occurring as a result of a mere lapse of time are not considered for alternate valuation purposes.
22. See, e.g., Revenue Ruling 93-12, 1993-7 I.R.B. 13.

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