



Parity for Main Street Employers

The Honorable Orrin Hatch
Chairman
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
United States House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Sander Levin
Ranking Member
Committee on Ways and Means
United States House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

September 22, 2016

Dear Chairmen and Ranking Members:

As Steering Committee Members of the Parity for Main Street Employers coalition, we are writing to express our strongest opposition to the proposed changes to Section 2704 included in "Estate, Gift, and Generation Skipping Transfer Taxes: Restrictions on Liquidation of Interest" published by the Department of Treasury on August 2, 2016.

The proposed regulations under Section 2704 target family businesses for higher estate and gift taxes, merely for being family-owned businesses. They would raise these taxes by largely eliminating the consideration of lack of control and lack of marketability when determining the fair market value of an interest in a family owned business, but only when that interest is passed on to a member of the family. Lack of control and lack of marketability are real economic factors that can reduce the fair market value of an asset by a sizable amount, so the proposed rules would have the effect of increasing the applicable estate and gift taxes by 30 percent or more.

A variety of unique challenges confront family businesses in their effort to survive from one generation to the next. Forcing them to pay higher gift and estate taxes on inflated, unrealistic valuations would make facing these challenges even more difficult, if not impossible. In response to these proposed rules, family businesses across the country are reassessing their succession plans to determine if they have the ability to survive the expected higher valuations.

When releasing the proposed rules, the head of Tax Policy at Treasury described the action as an effort to close an "estate and gift tax loophole." This statement is simply inaccurate. Taking lack of control and lack of marketability into account when assessing the value of a family-owned business is not a loophole, any more than when



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assessing the value of a non-family business. The fact that the proposed rule would leave intact these discounts for assets passed on to non-family members sends the message that Treasury is not opposed to the discounts, just their application to family members.

The impact of Treasury's proposed changes should trouble Congress. Their attempt to legislate through regulation should be equally concerning. There is nothing in the statute or the legislative record to indicate Congress intended Section 2704 to be as broadly applied as the proposed rules suggest. In fact, when Congress adopted Section 2704 in 1990, the accompanying Conference Report specifically stated, "These rules do not affect minority discounts or other discounts available under present law."

For the above reasons, we ask Congress to call on Treasury to withdraw this rule immediately and, failing that, request that Congress consider legislation making clear that Section 2704 was not designed to broadly target family businesses for higher gift and estate taxes.

Sincerely,

**American Institute of Architects
Associated Builders and Contractors
Associated General Contractors of America
Independent Community Bankers of America
National Association of Wholesaler-Distributors
National Beer Wholesalers Association
National Electrical Contractors Association
National Roofing Contractors Association
S Corporation Association**