

# Treasury Department Issues Proposed Regulations on Valuation Discounts

August 16, 2016

On Aug. 2, 2016, the Treasury Department issued proposed regulations on valuation discounts. These proposed regulations make sweeping changes to the valuation rules for family-owned entities. If the proposed regulations become final without substantial modification, they will significantly diminish the availability of discounts for valuing minority interests in family entities for gift and estate tax purposes.

The regulations take effect 30 days after final regulations are published. Since the public hearing is scheduled for Dec. 1, 2016, the earliest the regulations could become final is the end of this year. Anyone considering a gift or sale of an interest in a family-owned entity, or who has an interest in a family-owned entity with the anticipation that the value will be discounted on death, needs to consider planning options now.

Valuation discounts, including minority interests and lack of marketability discounts, have long been an integral part of estate and gift tax planning. These discounts relate not only to family businesses, but also to family limited partnerships or limited liability companies that own real estate or marketable securities.

It was initially anticipated that these regulations would attack only family entities with marketable securities. However, these proposed regulations are much broader than expected and will affect valuation discounts on all closely held family-owned entities. The approach taken is to treat each family owner (even an owner with a minority interest) as having the hypothetical right to sell back his or her interest in the entity within six months for cash. Thus, typical discounts associated with minority interest or lack of marketability would not be available. This rule would apply to gifts or sales during life, or transfers, on death.

In addition, there is a look-back rule that may result in a phantom asset being subject to estate tax if someone transfers a controlling interest in a family entity within three years of death. This rule may apply to transfers before the effective date if the transferor dies after the effective date.

If you would like to discuss the impact of these regulations, please contact your Lathrop Gage attorney or the attorneys listed above.