

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

November 3, 2016

The Honorable Jacob Lew
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Dear Secretary Lew:

We are writing regarding the proposed regulations issued by Treasury under Internal Revenue Code Section 2704, which would provide new rules regarding the estate tax valuation of ownership interests in family-controlled businesses transferred among family members. These proposed regulations as drafted represent a dramatic change from past practice and history and are not consistent with congressional intent. In order to avoid immediate and substantial economic harm to family-owned businesses and the jobs they create, these regulations should be withdrawn. Any new proposal in this area should be clearly defined and narrowly targeted within the reach of the applicable statutory rules.

The legislative history of Section 2704 is clear that this provision was enacted to overturn the result in *Estate of Harrison*, a case that involved the valuation of a limited partnership interest transferred among family members who all had the same rights to liquidate the partnership. The provision was not intended otherwise to affect the valuation of minority discounts or other discounts. The current regulations, enacted in 1992, are clear that Section 2704 is not meant to apply in cases where an individual owner gives up the right to control the business by transferring ownership interests to other family members. This properly reflects congressional intent.

In contrast, Treasury's recently proposed regulations, as drafted, would eliminate, or severely limit, minority discounts for transfers among family members of business interests in family-owned businesses. This new approach does not reflect congressional intent.

One example of the over-breadth of the proposed regulations is the new rules on disregarded restrictions, which are extremely broad and provide only limited relief for an active trade or business. These rules could have the effect of artificially and improperly increasing the value of ownership interests in family-owned businesses for gift and estate tax purposes. We are concerned that this would place family-owned businesses at a substantial disadvantage relative to other businesses – a result that Congress never intended or authorized under Section 2704.

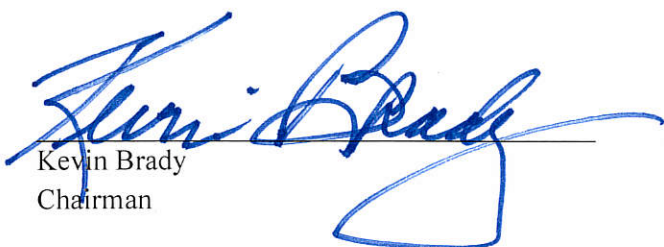
Another example of the over-breadth of the proposed regulations is the three-year look-back rule. This rule would recast transactions that occur within three years of death and create a phantom asset that then

would be required to be included in the estate for tax purposes. There is nothing in the legislative history to support such a rule.

Treasury tax policy officials have recently stated that the proposed regulations are not intended to be as far reaching as would appear from the language. While this is an encouraging statement, no clarity has been provided as to what Treasury did intend to cover with the proposed regulations. The combination of overly-broad language that does not make clear what discounts would continue to be recognized and new concepts that clearly are contrary to congressional intent is very troubling.

Accordingly, we ask that the proposed regulations be withdrawn while Treasury reconsiders how best to approach any identified issues under Section 2704 consistent with congressional intent underlying the statute. Any new guidance with respect to Section 2704 should be issued in the form of proposed regulations, with a detailed explanation included in the preamble so that affected small businesses and families have an opportunity to provide meaningful comments in response to clearly-stated rules and objectives.

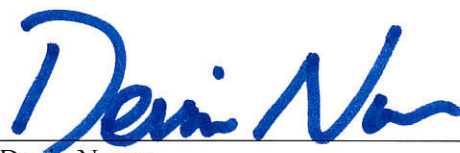
Sincerely,



Kevin Brady
Chairman



Sam Johnson
U.S. House of Representatives



Devin Nunes
U.S. House of Representatives



Patrick J. Tiberi
U.S. House of Representatives



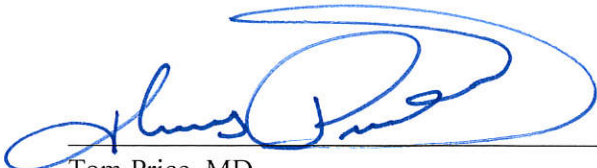
Dave Reichert
U.S. House of Representatives



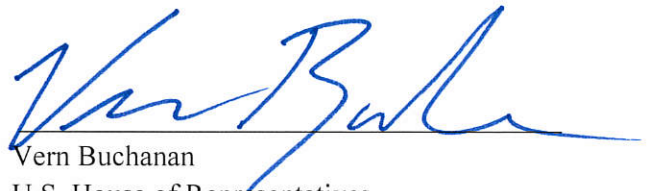
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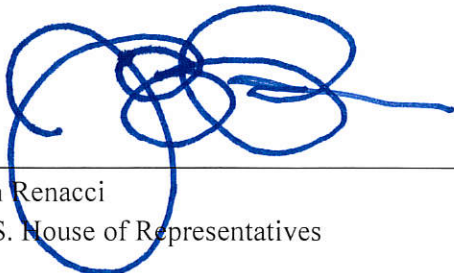
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