



July 11, 2017

Internal Revenue Service  
CC:PA:LPD:PR (Notice 2017-38)  
Room 5205  
Ben Franklin Station  
Washington, DC 20224

RE: Comments regarding Implementation of Executive Order 13789 (Identifying and Reducing Tax Regulatory Burdens)

Dear Secretary Mnuchin:

The Family Business Coalition renews our call for the Treasury Department to immediately withdraw the proposed changes to Section 2704 *Estate, Gift, and Generation-skipping Transfer Taxes: Restrictions on Liquidation of an Interest*. If implemented, these changes would increase the number of family businesses and farms subject to the federal estate tax (death tax). The regulations would remove important tools business owners use to adjust for lack of control and marketability when valuing minority shares of a small business.

In April, the Family Business Coalition wrote to request the withdrawal of these regulations. During comment period for the proposed changes to Section 2704, FBC sent a letter signed by 119 small business associations and advocacy groups calling for Treasury to withdraw the regulations. 24 members of the Ways and Means Committee and 41 Senators wrote to Treasury on November 3rd and September 29th respectively requesting that the regulations be withdrawn. Please find these letters attached for your consideration.

Thank you for including the proposed changes in the interim report and we urge you to recommend the proposed rule be withdrawn in the final report.

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*The Family Business Coalition (FBC) is a diverse collection of organizations and industry groups united for the common purpose of protecting America's family businesses across the country. FBC works to implement tax policies that help family businesses of all sizes, create jobs, and continue to the next generation.*



April 27, 2017

Secretary Steven Mnuchin  
U.S. Department of the Treasury  
1500 Pennsylvania Ave NW  
Washington, DC 20220

Dear Secretary Mnuchin:

On August 4, 2016 the Department of Treasury under Secretary Lew proposed changes to Section 2704 *Estate, Gift, and Generation-skipping Transfer Taxes: Restrictions on Liquidation of an Interest* which if implemented would increase the number of family businesses and farms subject to the federal estate tax (death tax). The regulations would remove important tools business owners use to adjust for lack of control and marketability when valuing minority shares of a small business. The Family Business Coalition (FBC) reiterates our request for the pending 2704 estate and gift tax regulations to be withdrawn.

We are encouraged by your comments to Senator Thune (R-SD) regarding the fair valuation of small business interests at the January 19, 2017 Senate confirmation hearing: “We need to make sure that people who own minority interest in operating businesses -- that the valuation for tax purposes are reflected appropriately, and anybody who follows the markets knows that there is a significant difference between control and non-control and the IRS should follow their valuations.”<sup>1</sup>

The pending 2704 regulations would disregard lack of control and lack of marketability in family business valuations, artificially increasing family businesses’ exposure to estate and gift taxes as a result. Withdrawing the regulations is consistent with the spirit of President Trump’s April 21, 2017 Executive Order 13789 instructing the Treasury Department to review all significant tax regulations issued on or after January 1, 2016 that: 1) impose an undue financial burden on U.S. taxpayers, 2) add undue complexity to the tax laws or 3) exceed the statutory authority of the IRS.

In addition, President Trump’s April 25, 2017 Executive Order 13790 *Promoting Agriculture and Rural Prosperity in America* calls for a task force to recommend policy changes that: “promote

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<sup>1</sup> United States. Cong. Senate. Committee on Finance. Hearing to Consider the Anticipated Nomination of Steven Terner Mnuchin to be Secretary of the Treasury. January 19, 2017. 115th Cong. 1st sess. Washington: 2017 (statement of Steven T. Mnuchin, Anticipated Nominee, Secretary of the Treasury). <https://www.c-span.org/video/?421858-1/treasury-secretary-nominee-steven-mnuchin-testifies-confirmation-hearing&start=8094>.

the preservation of family farms and other agribusiness operations as they are passed from one generation to the next, including changes to the estate tax and the tax valuation of family or cooperatively held businesses.”

During the comment period for the proposed changes to Section 2704, FBC sent a letter signed by 119 small business associations and advocacy groups calling for Treasury to withdraw the regulations. 24 members of the Ways and Means Committee and 41 Senators wrote to Treasury on November 3rd and September 29th respectively requesting that the regulations be withdrawn. These letters are attached for your consideration.

It is within the power of the Treasury Department to put an immediate halt to this pending expansion of the estate tax and we urge you to act now. We look forward to working with you and President Trump to create a healthier, more predictable playing field for family owned and operated businesses.

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September 22, 2016

Secretary Jack Lew  
U.S. Department of the Treasury  
1500 Pennsylvania Ave NW  
Washington, DC 20220

CC: Chairman Orrin Hatch, Chairman Kevin Brady, Ranking Member Ron Wyden, Ranking Member Sander Levin

Dear Secretary Lew:

The undersigned organizations oppose the Department of Treasury's proposed changes to Section 2704 on estate and gift tax valuation discounts. These rules will significantly change family businesses' succession plans and make it harder for family owned businesses to transition to the next generation. The changes proposed to Section 2704 would remove legitimate valuation discounts for estate, gift, and generation skipping taxes which businesses have used for the past two decades in order to prevent the IRS from overvaluing their businesses at death.

These proposed regulations would force even more family businesses and farms to grapple with the complicated and costly estate tax. Moreover, Treasury's action does not comport with the will of Congress. On April 16, 2015, the House passed the *Death Tax Repeal Act* (H.R. 1105) on a bipartisan basis 240-179. In March 2015, the Senate passed a budget amendment to repeal the estate tax (S. Amdt. 607) and in 2013, 80 Senators voted to "to repeal or reduce the estate tax, but only if done in a fiscally responsible way" (S. Amdt. 693). Bypassing Congress to enact rules subjecting more family businesses to the estate tax rebukes the hard work elected officials have done to reform and repeal the tax altogether.

The undersigned organizations strongly oppose the Treasury Department forcing more family businesses to pay the estate tax through changes to Section 2704. Contrarily, we support full and permanent repeal of the estate tax for the following reasons:

**Repealing the estate tax would spur job creation and grow the economy.** Many studies have quantified the jobs that would be gained from estate tax repeal. A recent Tax Foundation study found that the US could create over 150,000 jobs by repealing the estate tax. A 2012 study by the House Joint Economic Committee found that the estate tax has destroyed over \$1.1 trillion of capital in the US economy – loss of small business capital means fewer jobs and lower wages. Lawrence Summers, former Secretary of the Treasury under President Clinton; Alicia Munell, member of President Clinton's Council of Economic Advisors; Joseph Stiglitz, a Nobel laureate for economics; and Douglas Holtz-Eakin, former CBO Director have all published work on the estate tax's stifling effect on job growth and the economy as a whole.

**The estate tax contributes a very small portion of federal revenues.** The estate tax currently accounts for less than one percent of federal revenue. There is a good argument that not collecting the estate tax would create more economic growth and lead to an increase in federal

revenue from other taxes. In addition, the estate tax forces family businesses to waste money on expensive insurance policies and estate planning. These burdensome compliance costs make it even harder for business owners to expand their businesses and create more jobs.

**The estate tax falls particularly hard on minorities.** The estate tax threatens to confiscate generational capital from African-American and minority communities. Estate tax liabilities bankrupted the Chicago Defender – the oldest black-owned daily newspaper in the United States. According to a 2004 Impacto Group poll, 50 percent of Hispanic business owners know someone who sold their business to pay the estate tax and a quarter expect to sell their business because of the estate tax.

**A super-majority of likely voters support eliminating the estate tax.** Poll after poll has indicated that a super-majority of likely voters support repealing the estate tax. Typically, two-thirds of likely voters support full and permanent repeal of the estate tax. People instinctively feel that the estate tax is not fair.

**The estate tax is unfair.** It makes no sense to require grieving families to pay a confiscatory tax on their loved one’s lifetime savings. Often this tax is paid by selling family assets like farms and businesses. Other times, employees of the family business must be laid off and payrolls slashed. No one should be punished for fulfilling the American dream.

The undersigned organizations strongly suggest that the Treasury Department support family businesses seeking to pass to the next generation by withdrawing their proposed changes to Section 2704.

Signed,



AMT – The Association for Manufacturing Technology



Food Marketing Institute



Agricultural Retailers Association



International Foodservice Distributors Association



Convenience Distribution Association



Associated Equipment Distributors



International Franchise Association



American Supply Association



National Cotton Council of America



Heating, Air-conditioning, & Refrigeration Distributors International



National Association of Electrical Distributors



National Lumber and Building Material Dealers Association



National Council of Farmer Cooperatives



American Trucking Association



Associated General Contractors of America



American Architectural Manufacturers Association



Hardwood Federation



National Confectioners Association



Association of Mature American Citizens



Air Conditioning Contractors of America



Americans for Tax Reform



Forest Landowners



Associated Builders and Contractors, Inc.



National Association of Home Builders



Printing Industries of America



Truck Renting and Leasing Association



Americans Standing for Simplification of Estate Tax



Industrial Minerals Association – North America



International Sleep Products Association



National Taxpayers Union



ISSA – The Worldwide Cleaning Industry Association



United Fresh Produce Association



National Electrical Contractors Association



AmericanHort



Mason Contractors Association of America



Coalition of Franchisee Associations



Wine & Spirits Wholesalers of America



National Grange



Associated Wire Rope Fabricators



Heritage Action for America



Association of Equipment Manufacturers



American Foundry Society



International Housewares Association



Petroleum Marketers Association of America



American Conservative Union



National Industrial Sand Association



Window & Door Manufacturers Association



Aeronautical Repair Station Association



Equipment Marketing & Distribution Association



International Council of Shopping Centers



National Christmas Tree Association



American Business Defense Council



Education Market Association



National Association of Chemical Distributors



National Renderers Association



Equipment Dealers Association



Americans for Prosperity



Club for Growth



National Propane Gas Association



National Funeral Directors Association



American Loggers Council



The Dude Ranchers' Association



R-Street Institute



International Association of Plastics Distribution



United States Cattlemen's Association



International Sign Association



Auto Care Association



National Black Chamber of Commerce



National Small Business Association



Professional Beauty Association



Material Handling Equipment Distributors Association



Home Furnishings Association



Small Business & Entrepreneurship Council



NACS – The Association for Convenience and Fuel Retailing



American Beverage Licensees



Metal Construction Association



NPES – The Association for Suppliers of Printing, Publishing and Converting Technologies



Irrigation Association



Forest Landowners Tax Council



Florida Armenians, LLC



International Association of Refrigerated Warehouses



Global Cold Chain Alliance



American Commitment



Log Cabin Republicans



Franchise Business Services



Tire Industry Association



Jeffersonian Project



Rural Agriculture Council of America



American Moving & Storage Association



National Association for the Self-Employed



Independent Electrical Contractors



National Association of RV Parks & Campgrounds



NTEA – The Association for the Work Truck Industry



NATSO, Representing America's Travel Centers and Truckstops



60 Plus Association



Southeastern Lumber Manufacturers Association



National Franchisee Association



Competitive Enterprise Institute



Taxpayer Protection Alliance



American Bus Association



American Horse Council



Center for Freedom and Prosperity



U.S. Business and Industry Council



National Utility Contractors Association



National Community Pharmacists Association



Modification and Replacement Parts Association



WMCA Service Station & Automotive Repair Association



Campaign for Liberty



American Civil Rights Union



Let Freedom Ring



Less Government



Service Station Dealers of America and Allied Trades



National Tax Limitation Committee



NTCA—The Rural Broadband Association



Gases and Welding Distributors Association



The Latino Coalition



Hardwood Manufacturers Association



National Insulation Association



Family Business Coalition

# United States Senate

WASHINGTON, DC 20510

September 29, 2016

The Honorable Jacob Lew  
United States Treasury Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Ave., N.W.  
Washington, D.C. 20220

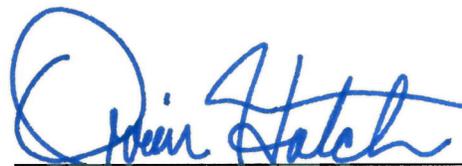
Dear Secretary Lew:

We write to express our serious concerns over proposed regulations (REG-163113-02) published on August 4, 2016, under Internal Revenue Code section 2704 ("proposed regulations") that, if finalized in their current form, will significantly increase the estate tax burden on family businesses. The proposed regulations eliminate or greatly reduce the discounts for lack of control and lack of marketability for family farms and businesses and will thus discourage families from continuing to operate and build their businesses. We ask that the proposed regulations not be finalized in their current form as they directly contradict long-standing legal precedent, create new uncertainty for taxpayers, and put family-owned businesses at a disadvantage relative to other types of businesses.

In an October 3, 2014, letter (attached), a number of us communicated to the Treasury Department and the Internal Revenue Service our strong opposition to any regulatory effort that would artificially inflate the valuation of estates and eliminate the benefits of estate tax relief legislation that was enacted on a bipartisan basis by the *American Taxpayer Relief Act of 2012*. By raising taxes on family farms and businesses, the proposed regulations represent a step back from the recently enacted permanent estate tax relief.

Treasury should pursue policies that encourage the creation and growth of family businesses and not propose regulatory changes that make it more difficult and costly for families to transfer ownership to future generations. We thus request that Treasury withdraw the proposed regulations and ask that any regulations that Treasury may issue in the future more directly target perceived abuses in the valuation of transferred interests in family businesses.

Sincerely,



Pat Roberts

John Cornyn

Johnny Isakson

Chuck Grassley

Mike Crapo

Tom Harkin

Ray Bennett

John McInnis

Steve Daines

David A. Vitter

Tom Cotton

Susan M. Collins

Cory Anderson

Jerry Moran

Mike Fuji

Mark

Dan Coak

Lamar Alexander

Richard Shelby

John Barrasso

Clara Kim

Jim McCallister

Kelly A. Ayotte

Liz Winter

James E. Kirsch

7-28

John Boyzman

Shelley Moore Capito

M. Michael Bond

Seb Tischer

Bowen

Jim

Joni K. Ernst

[Signature]

Phil Fleck

Paul Cochran

Thom Tillis

David Vitter

Ben Sasse

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## 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,



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Kevin Brady  
Chairman



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Sam Johnson  
U.S. House of Representatives



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Devin Nunes  
U.S. House of Representatives



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Patrick J. Tiberi  
U.S. House of Representatives



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Dave Reichert  
U.S. House of Representatives



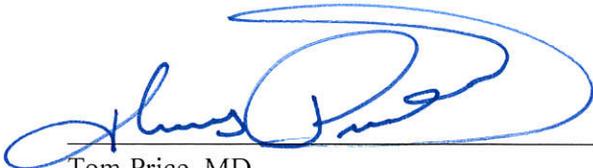
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Charles W. Boustany, MD  
U.S. House of Representatives



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Peter J. Roskam  
U.S. House of Representatives



Tom Price, MD  
U.S. House of Representatives



Vern Buchanan  
U.S. House of Representatives



Adrian Smith  
U.S. House of Representatives



Lynn Jenkins  
U.S. House of Representatives



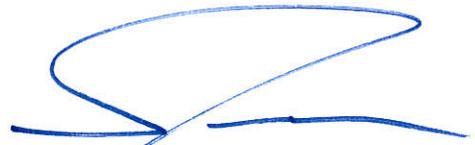
Erik Paulsen  
U.S. House of Representatives



Kenny Marchant  
U.S. House of Representatives



Diane Black  
U.S. House of Representatives



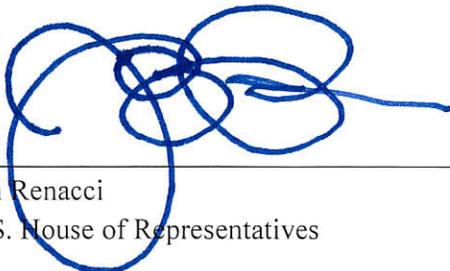
Tom Reed  
U.S. House of Representatives



Todd Young  
U.S. House of Representatives



Mike Kelly  
U.S. House of Representatives



Jim Renacci  
U.S. House of Representatives



Pat Meehan  
U.S. House of Representatives

  
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Kristi Noem  
U.S. House of Representatives

  
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George Holding  
U.S. House of Representatives

  
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Jason Smith  
U.S. House of Representatives

  
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Bob Dold  
U.S. House of Representatives

  
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Tom Rice  
U.S. House of Representatives