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**Subject:** Valuation Discounts at Risk - July 10, 2015  
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## Valuation Discounts at Risk

Yogi Berra used to say, "A nickel ain't worth a dime anymore."  
But a dime may be worth a nickel ... at least for the time being.

Valuing interests in family-controlled entities is a challenging process, and an area where taxpayers and the IRS have wrangled for many years. Valuations are even more challenging for nonvoting or minority interests, and meaningful discounts for the lack of control and lack of marketability inherent in these



types of interests have enabled families to achieve significant tax savings by reducing the value of gifted or inherited interests.

Tax legislation enacted in 1990 was intended to limit the ability to achieve these kinds of discounts by providing that certain restrictions applicable to interests in family-controlled entities must be disregarded for gift and estate tax purposes. While this law, and numerous court decisions applying it, have limited the availability of valuation discounts, they have by no means eliminated them.

Since 1990, there have been many tax proposals aimed at further restricting the availability of these discounts, particularly in view of the IRS's perception that this has been an area abused by taxpayers who "create" discounts by, for example, establishing a family partnership that holds primarily marketable securities and otherwise lacks a true business purpose. However, the IRS has not been able to get legislation passed to date.

The IRS has now indicated that it intends to proceed without legislation by announcing new regulations, expected this summer or early fall. These regulations would seek to significantly curtail or eliminate the availability of valuation discounts by prohibiting valuation firms from considering certain restrictions applicable to interests in family-controlled entities.

It is not clear whether interests in a "true" operating business will be exempt or, if so, how that distinction will be defined. It is also not clear under exactly what circumstances the regulations will be applied, but it is clear that the impact may be significant and will apply to transfers of interests occurring on or after the effective date of the regulations.

In light of this pending change, you may want to consider if this is now the time for you to enter into a sale, or consider a gift, of an interest in a family-controlled entity.

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