The Joint Committee on Taxation of both houses has published a study, entitled Options To Improve Tax Compliance and Reform Tax Expenditures. The study is available at: http://www.house.gov/jct/s-2-05.pdf

This business appraiser feels the need to comment on pages 396 through 404 of the report, which recommends 2 new rules for the determination of discounts for gift, estate, and generation skipping tax valuations. The new rules would basically value transferred assets without many of the traditional, and market-based discounts anyone can observe daily, rendering any valuation based on the proposed rules inconsistent with the concept of fair market value. In addition, the rules would run afoul of long established court decisions concerning the non-aggregation rule between family members. In short, Congress wants the transfer tax to apply to more than fair market value. This is theft, or at best hypocrisy !

First proposed rule: Aggregation

This would require that the value of an asset is the pro-rata share of the Fair Market Valuation of the entire interest in the asset owned by the transferor just before the transfer. In other words, a majority owner in a corporation, for example, may give four 20% interests to each of his/her children; the transfer would be valued without any discount because the transferor owned 80% or control. Never mind that the transferee is penalized because the Fair Market Value of his/her non-controlling 20% interest is worth less than it is valued and taxed at, eventually resulting in a lower gift. The same mis-valuation would occur under the proposed rule if the donor owns a minority interest in the asset, say 40%. The resulting 2 gifts of 20% each would be valued at half of the donor's interest, i.e. the gift would still be taxed on a value on excess of its value. Much of the same hypocrisy would also occur under the corollary "transferee aggregation rule" which would require that if the single donee somehow regains control, then the higher valuation applies. Either the gift is valued in the hand of the transferor or the transferee, not wherever it yields the most.

Second proposed rule: Look-through rule

The rule would require that, if an entity owns marketable securities, that proportion of the interest transferred which represents its share of marketable assets such as listed securities can not be discounted in any way. This is directly at odds with observations one can make every day in the capital markets, where closed-end funds are trading at a discount while being invested only in marketable securities. Granted, the discounts generated by Family Limited Partnerships invested in marketable discounts are much smaller than those of FLPs invested in real estate, or at least they should be if the valuations are performed by reference to real world measurements. The new rule is based on junk science, and flies in the face of countless academic studies of the capital markets, and the accepted finance and business valuation bodies of knowledge.

I realize the government is facing deficits, and the legislative branch is only interested in supporting its spending, all of which, it tells us, is necessary. Limiting legitimate discounts reflects poorly on the intent of the proposed rules: larceny ? socialism ? Of course Congress would prefer a rule which does not require financial know-how to apply uniformly; unfortunately, the real world is complex, and one can not legislate complex matters with simple rules without creating bigger problems and, in this case, overtaxing. Speak-up against the rules, or they may be approved.

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