



Suggested Disclosure Statement

For 2016 Gift Tax Returns Reporting Transfers of Interests in Family Controlled Entities, Include Adequate Disclosure Reference for the Section 2704 Proposed Regulations

Under the adequate disclosure rules, if a position taken on a gift tax return is contrary to a proposed regulation, it must be disclosed in order for the statute of limitations to run on the transfer disclosed on the return. Specifically, Treas. Reg. section 301.6501(c)-1(f)(2)(v) provides that “[a] statement describing any position taken that is contrary to any proposed, temporary or final Treasury regulations or revenue rulings published at the time of the transfer” must be included in the return. If a position is taken against a proposed regulation and not disclosed, the statute will not run.

With the recent issuance of the section 2704 proposed regulations, in order for the statute of limitations to start to run on a transfer on or after 8/4/2016 of an interest in a family controlled entity that involves discounts and that is disclosed on a gift tax return, members should add an optional paragraph to their standard adequate disclosure statement template disclosing the applicability of the proposed regulations. The optional paragraph would be included on disclosures regarding all gift transfers and non-gift completed transfers or transactions of family controlled partnerships, limited liability companies, corporations, S Corporations, and any other business entity sanctioned under a state’s laws. The statement should indicate that the section 2704 proposed regulations were not taken into account in determining value because, under the effective date provisions of the section 2704 proposed regulations, there is no requirement that the section 2704 proposed regulations be considered. The statement is necessary because the proposed regulations are being ignored.