



American Institute of CPAs  
1455 Pennsylvania Avenue, NW  
Washington, DC 20004-1081

February 13, 2012

The Honorable Douglas H. Shulman  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

The Honorable William J. Wilkins  
Chief Counsel  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Mr. Jeffrey Van Hove  
Tax Legislative Counsel  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Mr. Curtis G. Wilson  
Associate Chief Counsel for  
Passthroughs and Special Industries  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Re: Comments on [REG-112196-07](#) regarding Guidance on the Estate Tax Election to Use the Alternate Valuation Method under Section 2032, Notice of Proposed Rulemaking (11/17/2011)

Dear Messrs. Shulman, Wilkins, Van Hove, and Wilson:

The American Institute of CPAs (AICPA) submits the below comments in response to Prop. Reg. § 20.2032-1, regarding guidance for estates on the election to use the alternate valuation method under Internal Revenue Code section 2032. These comments supplement our [prior comments](#) (submitted August 1, 2008) on this subject.

The AICPA is the national professional organization of certified public accountants comprised of more than 377,000 members. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

### **Background**

Section 2032 of the Internal Revenue Code was enacted by the Revenue Act of 1935 as a direct result of the 1929 stock market crash. Congress intended to allow an estate to value its assets at the date six months after the decedent's death if that value was less than the date-of-death value. For over 70 years, this relatively simple statutory provision served its purpose with little difficulty on the part of tax practitioners and the Internal Revenue Service (Service) in applying its provisions. Because the Treasury Department and Service disagree with the result in the Tax Court's decision in *Kohler v. Commissioner*, [T. C. Memo 2006-152](#) (July 25, 2006), they seek to alter the result by revising existing regulations.

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## **Issues and Concerns**

The current version of the proposed regulations (REG-112196-07, 76 Fed. Reg. 71491) was issued in November 2011. After reviewing the proposed regulations, we are concerned that a once straight-forward statutory provision has evolved into a complex set of rules that will be increasingly difficult for estate representatives and practitioners to understand and accurately apply to their factual situations. If these proposed regulations are finalized, we believe that the additional complexity and administrative costs to an estate will constitute a barrier to its ability to make the alternate valuation election.

### **Actions Taken by Publicly-Traded Entities**

We are concerned that every action of a publicly-traded company must be scrutinized in order to comply with the provisions of the proposed regulations. For example, actions taken by publicly-traded companies could involve situations described in Prop. Reg. § 20.2032-1(c)(i)(I), namely a dilution or increase of the decedent's ownership by issuance or redemption of ownership interests, a reinvestment of the entity's assets, or a distribution of the entity's assets. The occurrence of any of these actions during the six-month alternate valuation period could affect the date on which the estate asset must be valued for purposes of section 2032. Applying the proposed rules to publicly-traded entities would place an undue administrative burden on the estate's representatives to keep track of all the activities of every publicly-traded entity in which the estate owns an interest. We believe that valuation changes resulting from any action taken by a publicly-traded entity during the alternate valuation period should be allowed as long as the decedent's estate does not own a controlling interest in the entity.

### **Actions Beyond the Control of the Decedent's Estate**

We are concerned that the proposed regulations fail to distinguish between valuation changes resulting from actions that are beyond the estate's control and valuation changes that are within the control of the estate (or its executor). As we suggested in our [letter dated August 1, 2008](#) regarding the [prior set of proposed regulations](#) (73 Fed. Reg. 22300, May 27, 2008), we continue to believe that the regulations should prohibit only valuation adjustments resulting from actions within the control of the decedent's executor. This should take care of justified concerns about the executor entering into transactions that reduce the value of the estate's assets to take advantage of section 2032. We continue to believe that the Tax Court's decision in *Kohler* was correct. In that case, the decedent's estate owned 12.85 percent of a company that was reorganized for business reasons completely unrelated to trying to reduce the value of the decedent's gross estate. As the Tax Court noted, the estate could not have blocked or approved the reorganization on its own so its only choice was to accept the new shares or be forced to surrender its shares for cash.

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### Too Many Appraisals for Unmarketable Assets

In addition to the complexity of the rules in the current version of the proposed regulations, we are concerned that the provisions appear to require numerous appraisals of unmarketable assets at various times during the six-month alternate valuation period. Such a costly requirement certainly will discourage an estate from even attempting to determine whether it qualifies to make the section 2032 election.

### Recommendations

The regulations should provide a blanket exception for any action taken by a publicly-traded entity provided the decedent's estate does not own a controlling interest in the entity. For assets that are not interests in publicly-traded entities, the regulations should limit the prohibition on valuation adjustments to only those adjustments resulting from actions within the control of the decedent's executor. If a decedent's estate has control over an entity and the executor participates in an action that has the effect of reducing the value of the estate's assets below their date of death value, the value of the estate's assets immediately before the executor's action will be the value used for purposes of the section 2032 election. We also suggest that the interests of the decedent's estate and decedent's family members be aggregated for purposes of determining whether the decedent's estate controls an entity. For these purposes, we suggest defining "family member" by reference to section 2701(e)(1) and (2) and defining "control" by reference to section 2701(b)(2)(A) and (B).

If this suggestion is not adopted, then we propose another simple solution patterned after the anti-abuse provision of [Treas. Reg. § 26.2612-1\(e\)\(2\)\(ii\)](#) of the generation-skipping transfer tax regulations. Under this suggestion, a change in ownership or a change in entity structure during the six-month period after the decedent's death that is undertaken primarily to reduce the value of an estate asset is disregarded in valuing that asset under section 2032. A change is considered undertaken primarily to reduce the value of an estate asset if the parties engaged in the transaction knew or should have known that the action taken would reduce the value of the asset by more than a *de minimis* amount. As suggested in the Prop. Reg. § 20.2032-1(c)(1)(ii), an amount would be *de minimis* if the change in value is equal to or less than 5 percent of the fair market value of the asset comparing the value of the asset immediately before and immediately after the transaction date. We believe this solution should alleviate the concerns that were the genesis for this project and at the same time allow estates to elect and use the alternate valuation provisions of section 2032 easily and as intended by Congress.

### Conclusion

In summary, we urge the Service and Treasury to consider our comments and recommendation to provide a blanket exception for any action taken by a publicly-traded

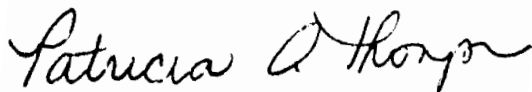
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entity and, for interests in non-publicly-traded entities, limit the prohibition on valuation adjustments to just those adjustments resulting from actions within the control of the decedent's executor. If that is not possible, then we urge adoption of a rule that would disregard a change in ownership or change in entity structure during the six-month alternate valuation period only if the change is undertaken primarily to reduce the value of an estate asset.

\* \* \* \* \*

We welcome the opportunity to discuss these comments or to answer any questions that you may have. I can be reached at (401) 699-0206, or [patt@pgco.com](mailto:patt@pgco.com); or you may contact Frances Schafer, Chair, AICPA Trust, Estate, and Gift Tax Technical Resource Panel, at (202) 521-1511, or [fran.schafer@us.gt.com](mailto:fran.schafer@us.gt.com); F. Gordon Spoor, Chair, AICPA Alternate Valuation Task Force, at (727) 343-7166 or [fgs@spoorcpa.com](mailto:fgs@spoorcpa.com); or Eileen Sherr, AICPA Senior Technical Manager, at 202-434-9256, or [esherr@aicpa.org](mailto:esherr@aicpa.org).

Sincerely,



Patricia A. Thompson, CPA  
Chair, Tax Executive Committee

cc: Ms. Catherine Veihmeyer Hughes, Estate and Gift Tax Attorney Advisor, Office of Tax Policy, Treasury Department  
Mr. James Hogan, Chief, Branch 4, Office of the Associate Chief Counsel for Passthroughs and Special Industries, Internal Revenue Service  
Ms. Theresa M. Melchiorre, Attorney, Office of Associate Chief Counsel for Passthroughs and Special Industries, Internal Revenue Service