

**ESTATE PLANNING
ALERT**

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IRS Contemplates Change in Wealth Transfer Strategy

A common practice for transferring wealth in a controlled manner to younger generations is to set up a family limited partnership ("FLP") or limited liability company ("LLC") to own a family business or investment assets such as real estate and securities, allowing the older generation to make gifts of interests in the FLP or LLC. According to the current federal gift and estate tax laws, the value of such an interest equals the price at which a willing buyer would purchase the interest from a willing seller. Because only a minority interest in the FLP or LLC is being gifted, the value for gift and estate tax purposes of the interest transferred is generally reduced by certain discounts for lack of marketability and control. Those combined discounts can range from 10% to 40% or more. A desired result of these transactions is lower gift and estate taxes.

For years, the administration has included proposals in their Fiscal Year Plans to change the gift and estate tax laws in such a way as to reduce or eliminate the discounts otherwise available when valuing intra-family transfers of minority interests in FLPs and LLCs. These proposals have never been implemented and in fact, were dropped from the administration's 2013 and 2014 Fiscal Year Plans. However, it has been reported that the IRS is drafting proposed regulations to make these changes, which may be released prior to year end.

There is no clear understanding of which transactions will be affected by the proposed regulations. Some industry analysts believe only intra-family transfers of interests in FLPs and LLCs that own only publicly-traded securities will be affected. Others believe that even FLPs and LLCs that own businesses or real estate may also be impacted. It is also unclear whether the new regulations will apply only to transfers that occur after the proposed regulations are released, or to prior transfers as well. Similar to 2012, we find ourselves uncertain of how, or if, there will be legislation to change the estate and gift tax laws at the end of the year.

If you are contemplating making gifts of interests in FLPs and LLCs or otherwise have questions or concerns about what impact these possible proposed regulations could have on your family, we encourage you to contact your estate planning attorney at [Freeman, Freeman & Smiley](#).

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