

## **Estate Tax Proposed Legislation**

On January 9, 2009, Representative Pomeroy introduced estate tax legislation called “Certain Estate Tax Relief Act of 2009 (HR 436). Depending on how you look at it, the bill has good and bad news. If you have high wealth, the news isn’t bad – it’s awful. So the time is now to take action. Besides, the economy is awful which under present laws may provide for some larger valuation discounts.

For years the gift and estate tax laws have provided that any non-cash lifetime or testamentary transfer of assets is valued at fair market value which generally means the price an informed willing buyer and seller would negotiate.

Valuators of these gifts usually assign a minority and lack of marketability discount when reporting on transfers of interest held by a family limited partnership, LLC, and other family owned pass through entities to reflect the reality that a buyer would not pay as much for a minority interest as would be paid for a controlling interest. In addition, family owned entities are not generally traded on an open market. We see illustrations of these discounts in many research studies over the years that have nothing to do with families.

### **Impact of the Proposed Bill**

If this proposed bill should become law, discounts for transfers of non-business assets would not be allowed. The bill proposes that any non-business assets, which are referred to as “any asset which is not used in the active conduct of one or more trades or businesses”, would not be allowed to take discount for a minority interest or lack of marketability. These assets would include cash, debt instruments, commodities, collectibles, certain royalties, and real estate activities where there is not material participation by the transferor. The proposed bill would also disallow any discounting for investment partnerships or real estate partnerships where the transferor does not materially participate and any other entity holding passive assets beyond reasonable working capital needs.

For those entities that are actively engaged in a trade or business, the proposed law would disallow any discount for a minority interest where the transferee and members of the transferee’s family have control of the entity. The discount for lack of marketability would still be available.

### **What’s Next?**

Representative Pomeroy has sponsored 114 bills of which only two were eventually enacted. There are also at least four other bills dealing with the estate tax currently pending in the House.

However, there has been a push over the past several years to put an end to any discounts on asset transfers when family is involved. This is contrary to all research on publicly traded companies which continually show discounts for minority transactions and lack of marketability.

So, if you believe that families should not be discriminated against, then you may want to write your congressperson and express your views. It is more likely than not that there will be estate tax changes and those changes could eliminate discounts on family asset transfers.

To be safe, you may want to encourage transfers very soon, and before any legislation removes valuation discounts for transfers within family.

If you would like to discuss valuation issues and opportunities for tax planning, mergers and acquisitions or other matters, please call 626-857-7300 for any of the following at these extensions:

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