

Estate Taxes

Final Estate-Tax Rules in Limbo Until Top Tax Posts Filled

BNA Snapshot

- IRS chief counsel, assistant Treasury posts still vacant
- Leaders chosen for those posts will determine fate of estate tax valuation rules, basis rules



By Allyson Versprille

The IRS's proposed estate basis consistency rules won't be made final until top positions like the assistant secretary for tax policy are filled, an agency official said.

"We don't know exactly when the final regulations are going to be released," said Theresa M. Melchiorre, attorney and acting assistant to the branch chief for Branch 5 in the Internal Revenue Service Office of Associate Chief Counsel (Passthroughs and Special Industries).

The IRS issued the proposed regulations (REG-127923-15) in March 2016 under tax code Sections 1014(f) and 6035. The rules require that the basis of assets received from a decedent be consistent with the basis reported on the estate tax return. The IRS and Treasury Department originally planned to have the rules finalized by the end of January.

"We don't have the people in place to actually issue regulations at this point," Melchiorre said March 3 at the Federal Bar Association Tax Law Conference. "I expect all of those problems we be solved shortly and we'll be back in the normal status of releasing guidance through Treasury," she said.

Uncertainty for Valuation Rules

The future of the agency's controversial estate tax valuation rules under Section 2704 (REG-163113-02) is also uncertain while the government's top tax posts remain vacant. "I think we're going to have to see who is the next assistant secretary for tax policy" at Treasury and the next IRS chief counsel before there is further guidance on the direction of those rules, said James F. Hogan, managing director at Andersen Tax LLC and a former IRS official.

The proposed regulations were intended to stem abuses in which valuation discounts were being applied to partnerships containing marketable securities such as stocks and bonds that could be easily valued and sold. But the rules have generated strong protests from family businesses and conservative lawmakers who say they are too broad.

House Ways and Means Committee Chairman Kevin Brady (R-Texas) called for President Donald Trump and Treasury Secretary Steven Mnuchin to pull the proposed guidance.

"It's anybody's guess what's going to happen in the next few months," said Leslie H. Finlow, senior technician reviewer for Branch 4 in the IRS Office of Associate Chief Counsel (Passthroughs and Special Industries), who is assigned to the project.

Finlow described the Section 2704 regulations as a "moving target" and reminded practitioners that they are only in proposed form. She said the rules are needed because the old valuation regulations have been "overtaken" by state tax law changes, litigation and creative tax planning.

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