NACVA

Presentation Points – Grossman

Testimony at Treasury, December 1, 2016

Good Morning / Afternoon:

My name is Robert J. Grossman and on behalf of the National Association of Certified Valuators and Analysts, (hereafter, NACVA), I would like to thank you for the opportunity to testify at today's hearing regarding our member's concerns regarding the proposed regulations.

NACVA is a global professional association that delivers training and certification in a number of financial consulting fields including, specifically, business valuation. Founded more than a quarter century ago, NACVA has trained nearly 30,000 certified public accountants and other financial professionals and it has certified more than 13,000 professionals in the fields of business valuation and related specialty services.

NACVA has also trained many engineers and valuators within the Internal Revenue Service.

The comments this morning were developed by a special team of NACVA's most experienced and knowledgeable members and include input and consideration of comments provided by our national membership. The findings of that committee and the comments today will be provided by myself, Mr. Mark Hanson of Green Bay, Wisconsin and Mr. Peter Agrapides of Salt Lake City, Utah. We are honored to present those findings and comments to you today.

I would further note that a major contributor to our findings and comments was Mr. Robert M. Weinstock, of Calabasas, California, who spoke earlier this morning.

Our comments parallel the submission of NACVA's written comments submitted on October 27, 2016.

Respectfully, my comments are as follows:

1. The proposed Treasury regulations seemingly work to modify the traditional and historic standard of *fair market value* used in estate and gift tax planning and compliance. That term has long been defined in Treasury regulations §20.2031-1(b) and §25.2512-1.

   The proposed regulations supplant the traditional term with a new term, *minimum value*. Minimum value does not look to the value of the equity ownership interest under valuation but rather to the underlying equity ownership interest's pro rata share of the net fair market value of the assets owned by the entity, reduced for certain defined debts of the entity multiplied by the share or equity ownership represented by the equity ownership interest under valuation.

   Such a definition is clearly artificial in that it ignores market realities and equity ownership interest attributes created by virtue of the entity's governing documents as well as state law.

2. Application of a new family attribution rule further decimates the traditional fair market value standard.

   The standard of *fair market value* has long been predicated upon an objective test wherein hypothetical buyers and sellers are at the heart of a hypothetical transaction. It is NOT intended to be interpreted as a personalized transaction focused on any particular buyer and/or seller. The proposed addition of family attribution, struck down by the Courts numerous times, again works to create an artificial standard of value differing from *fair market value*.

   Family attribution of any kind was not the original intent of Congress in passing Chapter 14 in 1990.

3. The imposition of a blanket dismissal of valuation discounts based on family attribution assumes that all family-owned organizations include owners that will act in harmony and accord. In fact, as many of those in attendance today can attest, such is often not the case. Such a presumption within the proposed regulations works, again, to supplant the

traditional and historical definition and understanding of the *fair market value* standard of value.

4. The inability to apply valuation discounts for lack of control and lack of marketability is inappropriate as such a result fails to recognize economic realities associated with the valuation of a capital equity interest. While the propriety of applying a discount for the lack of either attribute is a facts and circumstances determination, blanket dismissal of these discounts (which compensate for investment risk) is a rejection of market realities that are well documented and again result in an artificial platform for application of the transfer tax regime under United States tax law.

5. The utilization of discounts for lack of control, as well as lack of marketability has long been recognized as a legitimate measure of investment risk associated with the lack of these investment attributes. Examples of Treasury's acceptance of these valuation adjustments are easily identified in various rulings and case law, as well as recent internal guidance documents prepared by the Internal Revenue Service, itself, including the *Discount for Lack of Marketability Job Aid for IRS Valuation Professionals* and the Job Aid titled, *Valuation of Non-Controlling Interests in Business Entities Electing to be Treated as S Corporations for Federal Tax Purposes.*

Conclusion: It is the position of NACVA that the new rules, as included in the proposed regulations represent a new standard of value created only for a specific targeted group of equity owners. As such, this new standard appears to be capricious and arbitrary. More importantly, the new standard does not incorporate market realities into the valuation of the subject equity ownership interests.

On behalf of NACVA, I respectfully request that the proposed regulations be permanently withdrawn in total or, at a minimum, that they be withdrawn in their current form and released in a modified form at a later date with such modifications as are necessary to maintain fair market value as the appropriate standard of value in the estate and gift tax regime.

Thank you.