FAMILY BUSINESS COALITION

April 27, 2017

Secretary Steven Mnuchin
U.S. Department of the Treasury
1500 Pennsylvania Ave NW
Washington, DC 20220

Dear Secretary Mnuchin:

On August 4, 2016 the Department of Treasury under Secretary Lew proposed changes to Section 2704 *Estate, Gift, and Generation-skipping Transfer Taxes: Restrictions on Liquidation of an Interest* which if implemented would increase the number of family businesses and farms subject to the federal estate tax (death tax). The regulations would remove important tools business owners use to adjust for lack of control and marketability when valuing minority shares of a small business. The Family Business Coalition (FBC) reiterates our request for the pending 2704 estate and gift tax regulations to be withdrawn.

We are encouraged by your comments to Senator Thune (R-SD) regarding the fair valuation of small business interests at the January 19, 2017 Senate confirmation hearing: "We need to make sure that people who own minority interest in operating businesses -- that the valuation for tax purposes are reflected appropriately, and anybody who follows the markets knows that there is a significant difference between control and non-control and the IRS should follow their valuations."[1]

The pending 2704 regulations would disregard lack of control and lack of marketability in family business valuations, artificially increasing family businesses' exposure to estate and gift taxes as a result. Withdrawing the regulations is consistent with the spirit of President Trump's April 21, 2017 Executive Order 13789 instructing the Treasury Department to review all significant tax regulations issued on or after January 1, 2016 that: 1) impose an undue financial burden on U.S. taxpayers, 2) add undue complexity to the tax laws or 3) exceed the statutory authority of the IRS.

In addition, President Trump's April 25, 2017 Executive Order 13790 *Promoting Agriculture and Rural Prosperity in America* calls for a task force to recommend policy changes that: "promote

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[1] United States. Cong. Senate. Committee on Finance. Hearing to Consider the Anticipated Nomination of Steven Terner Mnuchin to be Secretary of the Treasury. January 19, 2017. 115th Cong. 1st sess. Washington: 2017 (statement of Steven T. Mnuchin, Anticipated Nominee, Secretary of the Treasury). https://www.c-span.org/video/?421858-1/treasury-secretary-nominee-steven-mnuchin-testifies-confirmation-hearing&start=8094.

the preservation of family farms and other agribusiness operations as they are passed from one generation to the next, including changes to the estate tax and the tax valuation of family or cooperatively held businesses."

During the comment period for the proposed changes to Section 2704, FBC sent a letter signed by 119 small business associations and advocacy groups calling for Treasury to withdraw the regulations. 24 members of the Ways and Means Committee and 41 Senators wrote to Treasury on November 3rd and September 29th respectively requesting that the regulations be withdrawn. These letters are attached for your consideration.

It is within the power of the Treasury Department to put an immediate halt to this pending expansion of the estate tax and we urge you to act now. We look forward to working with you and President Trump to create a healthier, more predictable playing field for family owned and operated businesses.

The Family Business Coalition (FBC) is a diverse collection of organizations and industry groups united for the common purpose of protecting America's family businesses across the country. FBC works to implement tax policies that help family businesses of all sizes, create jobs, and continue to the next generation.

September 22, 2016

Secretary Jack Lew
U.S. Department of the Treasury
1500 Pennsylvania Ave NW
Washington, DC 20220

CC: Chairman Orrin Hatch, Chairman Kevin Brady, Ranking Member Ron Wyden, Ranking Member Sander Levin

Dear Secretary Lew:

The undersigned organizations oppose the Department of Treasury's proposed changes to Section 2704 on estate and gift tax valuation discounts. These rules will significantly change family businesses' succession plans and make it harder for family owned businesses to transition to the next generation. The changes proposed to Section 2704 would remove legitimate valuation discounts for estate, gift, and generation skipping taxes which businesses have used for the past two decades in order to prevent the IRS from overvaluing their businesses at death.

These proposed regulations would force even more family businesses and farms to grapple with the complicated and costly estate tax. Moreover, Treasury's action does not comport with the will of Congress. On April 16, 2015, the House passed the *Death Tax Repeal Act* (H.R. 1105) on a bipartisan basis 240-179. In March 2015, the Senate passed a budget amendment to repeal the estate tax (S. Amdt. 607) and in 2013, 80 Senators voted to "to repeal or reduce the estate tax, but only if done in a fiscally responsible way" (S. Amdt. 693). Bypassing Congress to enact rules subjecting more family businesses to the estate tax rebukes the hard work elected officials have done to reform and repeal the tax altogether.

The undersigned organizations strongly oppose the Treasury Department forcing more family businesses to pay the estate tax through changes to Section 2704. Contrarily, we support full and permanent repeal of the estate tax for the following reasons:

Repealing the estate tax would spur job creation and grow the economy. Many studies have quantified the jobs that would be gained from estate tax repeal. A recent Tax Foundation study found that the US could create over 150,000 jobs by repealing the estate tax. A 2012 study by the House Joint Economic Committee found that the estate tax has destroyed over $1.1 trillion of capital in the US economy – loss of small business capital means fewer jobs and lower wages. Lawrence Summers, former Secretary of the Treasury under President Clinton; Alicia Munell, member of President Clinton's Council of Economic Advisors; Joseph Stiglitz, a Nobel laureate for economics; and Douglas Holtz-Eakin, former CBO Director have all published work on the estate tax's stifling effect on job growth and the economy as a whole.

The estate tax contributes a very small portion of federal revenues. The estate tax currently accounts for less than one percent of federal revenue. There is a good argument that not collecting the estate tax would create more economic growth and lead to an increase in federal revenue from other taxes. In addition, the estate tax forces family businesses to waste money on expensive insurance policies and estate planning. These burdensome compliance costs make it even harder for business owners to expand their businesses and create more jobs.

The estate tax falls particularly hard on minorities. The estate tax threatens to confiscate generational capital from African-American and minority communities. Estate tax liabilities bankrupted the Chicago Defender – the oldest black-owned daily newspaper in the United States. According to a 2004 Impacto Group poll, 50 percent of Hispanic business owners know someone who sold their business to pay the estate tax and a quarter expect to sell their business because of the estate tax.

A super-majority of likely voters support eliminating the estate tax. Poll after poll has indicated that a super-majority of likely voters support repealing the estate tax. Typically, two-thirds of likely voters support full and permanent repeal of the estate tax. People instinctively feel that the estate tax is not fair.

The estate tax is unfair. It makes no sense to require grieving families to pay a confiscatory tax on their loved one's lifetime savings. Often this tax is paid by selling family assets like farms and businesses. Other times, employees of the family business must be laid off and payrolls slashed. No one should be punished for fulfilling the American dream.

The undersigned organizations strongly suggest that the Treasury Department support family businesses seeking to pass to the next generation by withdrawing their proposed changes to Section 2704.

Signed,

AMT – The Association for Manufacturing Technology	Food Marketing Institute	Agricultural Retailers Association
International Foodservice Distributors Association	Convenience Distribution Association	Associated Equipment Distributors
International Franchise Association	American Supply Association	National Cotton Council of America

Heating, Air-conditioning, & Refrigeration Distributors International

National Association of Electrical Distributors

National Lumber and Building Material Dealers Association

National Council of Farmer Cooperatives

American Trucking Association

Associated General Contractors of America

American Architectural Manufacturers Association

Hardwood Federation

National Confectioners Association

Association of Mature American Citizens

Air Conditioning Contractors of America

Americans for Tax Reform

Forest Landowners

Associated Builders and Contractors, Inc.

National Association of Home Builders

Printing Industries of America

Truck Renting and Leasing Association

Americans Standing for Simplification of Estate Tax

Industrial Minerals Association – North America

International Sleep Products Association

National Taxpayers Union

ISSA – The Worldwide Cleaning Industry Association

United Fresh Produce Association

National Electrical Contractors Association

AmericanHort

Mason Contractors Association of America

Coalition of Franchisee Associations

Wine & Spirits Wholesalers of America

National Grange

Associated Wire Rope Fabricators

Heritage Action for America	Association of Equipment Manufacturers	American Foundry Society
International Housewares Association	Petroleum Marketers Association of America	American Conservative Union
National Industrial Sand Association	Window & Door Manufacturers Association	Aeronautical Repair Station Association
Equipment Marketing & Distribution Association	International Council of Shopping Centers	National Christmas Tree Association
American Business Defense Council	Education Market Association	National Association of Chemical Distributors

National Renderers Association

Equipment Dealers Association

Americans for Prosperity

Club for Growth

National Propane Gas Association

National Funeral Directors Association

American Loggers Council

The Dude Ranchers' Association

R-Street Institute

International Association of Plastics Distribution

United States Cattlemen's Association

International Sign Association

Auto Care Association

National Black Chamber of Commerce

National Small Business Association

Professional Beauty Association

Material Handling Equipment Distributors Association

Home Furnishings Association

Small Business & Entrepreneurship Council

NACS – The Association for Convenience and Fuel Retailing

American Beverage Licensees

Metal Construction Association

NPES – The Association for Suppliers of Printing, Publishing and Converting Technologies

Irrigation Association

Forest Landowners Tax Council

Florida Armenians, LLC

International Association of Refrigerated Warehouses

Global Cold Chain Alliance

American Commitment

Log Cabin Republicans

Franchise Business Services

Tire Industry Association

Jeffersonian Project

Rural Agriculture Council of America	American Moving & Storage Association	National Association for the Self-Employed
Independent Electrical Contractors	National Association of RV Parks & Campgrounds	NTEA – The Association for the Work Truck Industry
NATSO, Representing America's Travel Centers and Truckstops	60 Plus Association	Southeastern Lumber Manufacturers Association
National Franchisee Association	Competitive Enterprise Institute	Taxpayer Protection Alliance
American Bus Association	American Horse Council	Center for Freedom and Prosperity

U.S. Business and Industry Council

National Utility Contractors Association

National Community Pharmacists Association

Modification and Replacement Parts Association

WMDA Service Station & Automotive Repair Association

Campaign for Liberty

American Civil Rights Union

Let Freedom Ring

Less Government

Service Station Dealers of America and Allied Trades

National Tax Limitation Committee

NTCA–The Rural Broadband Association

Gases and Welding Distributors Association

The Latino Coalition

Hardwood Manufacturers Association

National Insulation Association

Family Business Coalition

United States Senate

WASHINGTON, DC 20510

September 29, 2016

The Honorable Jacob Lew
United States Treasury Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220

Dear Secretary Lew:

We write to express our serious concerns over proposed regulations (REG-163113-02) published on August 4, 2016, under Internal Revenue Code section 2704 ("proposed regulations") that, if finalized in their current form, will significantly increase the estate tax burden on family businesses. The proposed regulations eliminate or greatly reduce the discounts for lack of control and lack of marketability for family farms and businesses and will thus discourage families from continuing to operate and build their businesses. We ask that the proposed regulations not be finalized in their current form as they directly contradict long-standing legal precedent, create new uncertainty for taxpayers, and put family-owned businesses at a disadvantage relative to other types of businesses.

In an October 3, 2014, letter (attached), a number of us communicated to the Treasury Department and the Internal Revenue Service our strong opposition to any regulatory effort that would artificially inflate the valuation of estates and eliminate the benefits of estate tax relief legislation that was enacted on a bipartisan basis by the *American Taxpayer Relief Act of 2012*. By raising taxes on family farms and businesses, the proposed regulations represent a step back from the recently enacted permanent estate tax relief.

Treasury should pursue policies that encourage the creation and growth of family businesses and not propose regulatory changes that make it more difficult and costly for families to transfer ownership to future generations. We thus request that Treasury withdraw the proposed regulations and ask that any regulations that Treasury may issue in the future more directly target perceived abuses in the valuation of transferred interests in family businesses.

Sincerely,

John Thune

Orrin Hatch

Pat Roberts

John Cornyn

[illegible]

Chuck Grassley

Mike Crapo

Dean Heller

Roy Blunt

John McCain

Steve Daines

David A Perdue

Tom Cotton

Susan M. Collins

Cory [illegible]

Jerry Moran

Mike Enzi

[illegible]

Dan Coats

Lamar Alexander

Richard Shelby

John Barrasso

Mark Kirk

[illegible]

Kelly A. Ayotte

Roger Wicker

James E Risch

John Boozman

Shelley Moore Capito

M. Michael Rounds

Deb Fischer

Joni K Ernst

Thad Cochran

Thom Tillis

David Vitter

Ben Sasse

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

November 3, 2016

The Honorable Jacob Lew
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Dear Secretary Lew:

We are writing regarding the proposed regulations issued by Treasury under Internal Revenue Code Section 2704, which would provide new rules regarding the estate tax valuation of ownership interests in family-controlled businesses transferred among family members. These proposed regulations as drafted represent a dramatic change from past practice and history and are not consistent with congressional intent. In order to avoid immediate and substantial economic harm to family-owned businesses and the jobs they create, these regulations should be withdrawn. Any new proposal in this area should be clearly defined and narrowly targeted within the reach of the applicable statutory rules.

The legislative history of Section 2704 is clear that this provision was enacted to overturn the result in *Estate of Harrison*, a case that involved the valuation of a limited partnership interest transferred among family members who all had the same rights to liquidate the partnership. The provision was not intended otherwise to affect the valuation of minority discounts or other discounts. The current regulations, enacted in 1992, are clear that Section 2704 is not meant to apply in cases where an individual owner gives up the right to control the business by transferring ownership interests to other family members. This properly reflects congressional intent.

In contrast, Treasury's recently proposed regulations, as drafted, would eliminate, or severely limit, minority discounts for transfers among family members of business interests in family-owned businesses. This new approach does not reflect congressional intent.

One example of the over-breadth of the proposed regulations is the new rules on disregarded restrictions, which are extremely broad and provide only limited relief for an active trade or business. These rules could have the effect of artificially and improperly increasing the value of ownership interests in family-owned businesses for gift and estate tax purposes. We are concerned that this would place family-owned businesses at a substantial disadvantage relative to other businesses – a result that Congress never intended or authorized under Section 2704.

Another example of the over-breadth of the proposed regulations is the three-year look-back rule. This rule would recast transactions that occur within three years of death and create a phantom asset that then would be required to be included in the estate for tax purposes. There is nothing in the legislative history to support such a rule.

Treasury tax policy officials have recently stated that the proposed regulations are not intended to be as far reaching as would appear from the language. While this is an encouraging statement, no clarity has been provided as to what Treasury did intend to cover with the proposed regulations. The combination of overly-broad language that does not make clear what discounts would continue to be recognized and new concepts that clearly are contrary to congressional intent is very troubling.

Accordingly, we ask that the proposed regulations be withdrawn while Treasury reconsiders how best to approach any identified issues under Section 2704 consistent with congressional intent underlying the statute. Any new guidance with respect to Section 2704 should be issued in the form of proposed regulations, with a detailed explanation included in the preamble so that affected small businesses and families have an opportunity to provide meaningful comments in response to clearly-stated rules and objectives.

Sincerely,

Kevin Brady
Chairman

Sam Johnson
U.S. House of Representatives

Devin Nunes
U.S. House of Representatives

Patrick J. Tiberi
U.S. House of Representatives

Dave Reichert
U.S. House of Representatives

Charles W. Boustany, MD
U.S. House of Representatives

Peter J. Roskam
U.S. House of Representatives

Tom Price, MD
U.S. House of Representatives

Vern Buchanan
U.S. House of Representatives

Adrian Smith
U.S. House of Representatives

Lynn Jenkins
U.S. House of Representatives

Erik Paulsen
U.S. House of Representatives

Kenny Marchant
U.S. House of Representatives

Diane Black
U.S. House of Representatives

Tom Reed
U.S. House of Representatives

Todd Young
U.S. House of Representatives

Mike Kelly
U.S. House of Representatives

Jim Renacci
U.S. House of Representatives

Pat Meehan
U.S. House of Representatives

Kristi Noem
U.S. House of Representatives

George Holding
U.S. House of Representatives

Jason Smith
U.S. House of Representatives

Bob Dold
U.S. House of Representatives

Tom Rice
U.S. House of Representatives