

November 2, 2016

CC:PA:LPD:PR (REG-163113-02)
Room 5203
Internal Revenue Service
POB 7604
Ben Franklin Station
Washington, DC 20044

**RE: Estate, Gift, and Generation-Skipping Transfer Taxes; Restrictions on
Liquidation of an Interest**

On behalf of the more than 6,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer comments on the Internal Revenue Service's (IRS) proposed rulemaking regarding Estate, Gift, and Generation-Skipping Transfer Taxes; Restrictions on Liquidation of an Interest.

ARTBA's membership includes private and public sector members that are integral to the planning, designing, construction and maintenance of the nation's roadways, waterways, bridges, ports, airports, rail and transit systems. Our industry generates more than \$380 billion annually in U.S. economic activity and sustains more than 3.3 million American jobs.

In the proposed rule's description, the IRS notes "[t]hese proposed regulations concern the treatment of certain lapsing rights and restrictions on liquidation in determining the value of transferred interests. These proposed regulations affect certain transferors of interests in corporations and partnerships and are necessary to prevent the undervaluation of such interests." Specifically, the IRS proposal will impact how small, family-owned businesses are valued for purposes of estate planning.

In explaining the proposal, the IRS cites a small number of estate litigation cases, but does not accurately explain the overarching problem which it seeks to remedy. If the IRS is seeking to change the specific results from particular litigation, surely there must be more direct way to do so than the present proposal. The IRS should withdraw the current rule and propose a regulation which clearly explains the problem it is seeking to fix and does so in as narrow a manner as possible rather than negatively effecting every small, family-owned business seeking to plan ahead for the future.

Small, family-owned businesses are a core part of the transportation construction marketplace. According to Census Bureau data, 94 percent of highway, street, bridge and other heavy and civil engineering construction firms are earning less than \$35 million in annual average receipts, placing them below the \$36.5 million Small Business Administration (SBA) annual threshold for classification as small businesses. These small businesses account for about 33 percent of total receipts, 44 percent of all employment and 39 percent of total payroll in the transportation construction industry.

Under the IRS proposal, family-owned small businesses would be restricted in their ability to discount shareholder stock for estate tax purposes for interests including “lack of control” or “lack of marketability.” Such discounting is a necessity for family estate planning as it allows the business owner to transfer non-controlling shares of their business to children or other relatives without fear of having to give up primary control of the overall enterprise. Further, these discounts prevent shares in a business interest from being overvalued at the primary business owner’s time of death.

When and whether or not to sell or continue a business after the owner passes away is perhaps the most significant decision a family will have to make. The lives of family members and company employees will be directly impacted by the estate planning decisions of a small business owner. By restricting the ability to offer appropriate discounts on shareholder stock in a small business, the IRS would enact policies counter to current tax and estate planning law which are meant to help transition ownership of family-owned businesses from generation to generation.

In conclusion, IRS should withdraw the current, overly-broad proposal and re-issue a more targeted rulemaking with a better explanation of exactly what problem the agency is seeking to remedy.

Sincerely,

A handwritten signature in black ink that reads "T. Peter Ruane". The signature is written in a cursive style with a large, stylized initial "T".

T. Peter Ruane
President & C.E.O