August 4, 2017

The Honorable Steven T. Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Comments on Notice 2017-38 and Treasury Department Review of Proposed Estate Tax Regulations (REG-163113-02)

Dear Secretary Mnuchin:

The undersigned organizations welcome the focus that you and the Administration have brought to the often-unintended consequences of federal tax regulations, as well as your specific initiative to modify or rescind regulations that create unnecessary complexity or impose undue burdens on taxpayers. Pursuant to Executive Order 13789 and IRS Notice 2017-38, we write to request that the Treasury Department and Internal Revenue Service (IRS) rescind the Proposed Regulations under Section 2704 on Restrictions on Liquidation of an Interest for Estate, Gift and Generation-Skipping Transfer Taxes (REG-163113-02).

Family-owned real estate businesses support job creation, economic growth, and strong communities throughout the country. In 2012, the 5.33 million family-owned businesses in the United States included more than one million real estate and construction companies.[1] Family-owned businesses employ nearly 22 million workers with a total payroll in excess of $784 billion. The owners of family businesses are deeply involved in the civic life and economic development of their communities, large and small, and they are often the first to respond to critical local needs. Family-owned businesses embrace responsible labor and environmental practices and maintain strong relationships with suppliers and customers.

At a time of economic uncertainty, when economic growth remains tepid and job creation is a top priority, issuance of the Proposed Regulations last August was a step in the wrong direction. The rules would prevent family businesses from successfully transitioning from one generation to the next. They run counter to the job-creating policies the country needs.

These conclusions are not merely conjecture. According to a May 2017 study by economist Robert J. Shapiro, ending the valuation discount would negatively affect the present discounted value of family business assets — reducing the U.S. capital stock by $633.3 billion over 46 years and decreasing GDP by $154 billion over the next 10 years.[2] Dr. Shapiro also

[1] U.S. Census Bureau, *2012 Survey of Business Owners* (Sept. 2015), *available at:* http://census.gov/data/developers/data-sets/business-owners.html.

[2] Shapiro, Robert J., *An Economic Analysis of Proposals to Limit the Recognition of*

demonstrates that with slower GDP growth, employment levels would go down. When compared to a baseline assuming that the valuation discount is retained, Dr. Shapiro estimates that annual job losses would range from 8,208 to 17,962 — and cumulative losses would total 105,990 jobs over 10 years.

In addition to the negative economic impact, the Proposed Regulations go beyond potential tax abuses and capture ordinary situations that arise in active, family-owned real estate businesses, including those that own and operate commercial buildings, shopping centers and multifamily housing. Family members often inherit real estate interests that have no discernable value in the secondary market and cannot be liquidated on demand. The rules unfairly and incorrectly assume coordination/collusion on the part of all surviving family members. Restrictions on the liquidation and control of family-owned real estate businesses serve an important non-tax purpose—the preservation of the business as an ongoing concern. In short, the Proposed Regulations disregard the realities of intergenerational transfers of property interests. By applying the new rules to operating companies and illiquid assets, such as real estate, the Proposed Regulations would disrupt businesses that employ hundreds of thousands of workers.

Finally, the Proposed Regulations go well beyond Congress' original intent. Congress did not grant Treasury the authority to promulgate legislative regulations under section 2704. The three-year bright-line test in Prop. Reg. § 25.2704-1(c)(1) and the extension of the rules to business entities other than corporations and partnerships in Prop. Regs. §§ 25.2701-2(b)(5)(i) and (iv), for example, are clearly the types of changes that require legislative regulations.

For all of these reasons, the Proposed Regulations should be rescinded under the criteria set forth by President Trump and the Department of the Treasury when you issue your final regulatory report next month. If the officials reviewing these regulations would like additional information or have specific questions regarding these comments, they should contact Ryan McCormick with The Real Estate Roundtable at (202) 639-8400 or by email at rmccormick@rer.org. Thank you for your consideration of these concerns.

Sincerely,

American Seniors Housing Association
International Council of Shopping Centers
NAIOP, Commercial Real Estate Development Association
National Apartment Association
National Multifamily Housing Council
The Real Estate Roundtable

Valuation Discounts for Transfers of Interests in Large Family Businesses, May 2017.