

# private client services

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## HOT TOPICS - MINORITY AND MARKETABILITY DISCOUNTS AND ASSET PROTECTION

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In many of the tax bills currently introduced in Congress, there are provisions which would eliminate or severely restrict the use of “minority interest” and “marketability” discounts, which have been utilized for years in both the estate and gift tax areas to reduce the value of interests in closely owned entities in order to save taxes. While it is unclear at this time whether these provisions will end up being passed, studies indicate that the tax revenues generated from eliminating these restrictions could raise between 2-4 billion dollars per year. The IRS, however, in its recent “greenbook”, which identifies areas in which the IRS intends to focus, has indicated that it believes existing Code Section 2704 and its Regulations, give it the current authority to make many of these changes without further legislation. Many practitioners disagree with this analysis. How the IRS intends to move forward is unclear at this point, but what is clear is that changes may be coming and we need to assist our clients in planning for them.

Also, as the economy has been in its downswing, asset protection from creditors has become a hot topic for many clients. Several states, including Delaware and Nevada, have passed legislation containing friendly debtor protection provisions, which individuals from other jurisdictions have tried to utilize by claiming certain relationships and nexus to those states. Creditors are fighting back including alleging that the debtors’ advisors are “aiding and abetting” fraudulent conveyances by the debtor, which could create a liability for the advisor. In addition, there have been several cases where the courts have dismissed the so called “nexus” the non-resident has claimed with these debtor protection states and ordered the Trustee to pay the creditors from the assets he controls. When and how an advisor can or should help counsel a client to protect his assets from creditors is under close scrutiny and requires a new perspective.



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