

# Long Island Business News

<http://libn.com/2016/10/21/all-in-the-family-2/>

## All in the family

By: Claude Solnik October 21, 2016

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Strong's Marine has stayed Strong, literally, for more than 70 years. CEO Jeff Strong's grandfather founded it in Lindenhurst in 1945 and his parents moved it to Mattituck in 1965. He, his wife, Re, and sons Ryan and Jay along with 70 employees have kept the business growing.

The marina, boat sales and boat-restoration company recently acquired Matt a Mar and Mattituck Inlet Marina and Shipyard. If anything, it's getting stronger.

"You have to have caring, passionate, incredible employees and customers that respond to the products that we're offering, which gives you the profitability to consider deals like that," Jeff Strong said.

While a company is its employees, the firm is run by the third generation with the fourth as the expected future owners.

"Family businesses as a general rule are becoming more of a dying breed," Jeff Strong said. "Anything the government can do to support family businesses staying within the family is needed."

As the debate continues over whether to ax the estate tax, the Internal Revenue Service has long had at least one family-friendly provision known as the family valuation "discount."

Since those gifting or bequeathing stakes in a family business to relatives typically can't sell to the highest bidder and recipients rarely control the business, they can value the business for tax purposes at a discount.

The IRS, however, has proposed severely curtailing discounts to family members, effectively raising the cost on transferring businesses within a family.

"The proposals are facing opposition by tax practitioners, taxpayers and other advisors who argue that the IRS has overstepped its authority," according to Scott Ditman, chair of personal wealth services at Berdon with Long Island operations in Jericho.

A public hearing is slated for December in what is likely to be a contentious showdown and a key factor in the future of family businesses.

"I can say that I absolutely disagree with the government," PC Richard & Son CEO Gregg Richard said, adding some businesses could "be forced to sell" and have trouble passing "down to the next generation as before."

## **The family discount**

The IRS' code Section 2704 may sound technical, but it has a simple impact: Discounts are given when businesses are gifted to family members due to things such as lack of control and marketability.

“That pertains to the illiquid nature of a family-owned business,” said John Tsunis, CEO of Islandia-based Gold Coast Bank. “It’s not just the tightly held family farm. It’s family-owned businesses that have grown and are looking to spread the equity to other generations.”

Companies typically don’t let family members sell on the open market for the highest value, to prevent new owners from taking control.

“In operating agreements, typically there are restrictions,” said Pasquale Rafanelli, valuation manager at Grassi & Co. with Long Island operations in Jericho.

The changes would only impact family members who currently qualify, but people don’t typically give stakes in companies to others.

“The IRS is pushing on one side,” said Lisa Rispoli, Grassi & Co.’s partner-in-charge of trust and estates. “The other side would be the rest of the taxpayer community, attorneys, wealth managers, anyone involved in estate planning.”

Donald Trump has talked about eliminating federal estate taxes that kick in at \$10 million for a husband and wife’s combined assets. Hillary Clinton has talked about potentially increasing the tax.

“If you eliminate the estate tax, this question becomes moot,” Roberto Viceconte, a partner at Raich Ende Malter & Co. with Long Island operations in Melville, said. “You don’t need a discount, because there’s no estate tax.”

Jeff Strong said, whether or not the estate tax is eliminated, he believes passing down the business to the next generation should not be treated like a typical sale.

“You should be able to transfer ownership amongst the family without having the tax burdens,” Strong said. “It’s really not a sale.”

## **Giving them the business**

While many transfers are just what they appear, some taxpayers have been transferring assets, including stock, into family businesses, to get reduced rates on those as well.

Rafanelli said, “A lot of people are taking advantage of assets they put into those vehicles.” Strong said it might make sense to crack down on abuses, but not to cut down basic discounts.

While new regulations would affect all industries, Ditman said they “would have a particularly significant impact in the case of real estate business owners.”

He said “special considerations” can impact real estate, such as depreciating assets, refinancing mortgages and distributing additional money to the owners.

“With real estate, the income tax basis of the assets could be significantly lower than the market value,” Ditman said.

Since regulations haven’t been finalized, many people may not know about the debate.

“If they speak with their advisor, they should be aware,” Rispoli said. “But I’m sure plenty of people are not.”

Rafanelli said, “Right now with the discount, everyone thinks it will always be there.”

“People want to take advantage of what’s before them now. Who knows what will happen in the future?” Rafanelli said. “If you’re looking to make that gift or that transfer, the more you do now and the better off you’ll be.”

### **Hurry up, don’t wait**

Those not considering gifting a business now aren’t so likely to be moved to action, even by the prospect of tax changes.

“I think there’s a wait-and-see approach,” Viceconte said. “I would tell people if you’re contemplating planning in this area, you might want to speed it up.”

Ditman said those planning or interested in making family gifts and sales to reduce estate tax payable at death should “take action” now.

“Even if you are not currently planning a transaction, review your estate plan with your advisor in light of these proposed regulations,” he said.

Although IRS regulations can go into effect 30 days after they’re finalized, these, if and when passed, would most likely go into effect later. But it takes time to give a stake in a business.

“You’ll need a valuation to do that gift,” Rispoli added. “Right now the valuation experts are backed up because of this acceleration.”

Although the IRS could go after discounts, that change is not likely to come without a fight in the courts.

“There is a technical question as to whether these regulations will be valid,” Michael D’Addio, partner in tax and business services at Marcum in New Haven, Conn., said. “The [IRS] has had a problem with intra-family transfers. They’ve lost in court in terms of eliminating the discounts.”

This could lead to more work for accountants and attorneys, as families seek to pass down their businesses without seeing taxes rise.



**MICHAEL D'ADDIO:** After Congress failed to act, the IRS took up the issue.

“There will be additional court cases,” Viceconte said. “There may be constitutional questions. It’s the first line of attack by the IRS. But I don’t think by any means it’s over.”