

Internal Revenue Code Section 2701 and Carried Interest Planning - the Basics

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This article, as originally published in the Volume 24 2018 Issue 2 of the California Trust and Estates Quarterly, focuses on providing a basic understanding of the technical section that focuses on the value of intra-family transfers of interests in privately held corporations or partnerships.

A key component of wealth transfer planning is understanding the value—current and future—of an asset. That value is considered in deciding what to gift, when to gift, and what planning vehicle to use when gifting. Internal Revenue Code Section 2701 is a technical section that focuses on the value of intra-family transfers of interests in privately- held corporations or partnerships. Section 2701 can be a trap for the unwary transferor who does not take into account its provision when analyzing the value of a sale, gift, or exchange for adequate consideration.

If Section 2701 is applicable to a transfer, special valuation rules apply that differ from the standard test for fair market value under the willing buyer-willing seller rule.¹ The effect of Section 2701 can greatly increase the value of a gift and, therefore, may result in a significant and unexpected transfer tax liability.

This article is designed to provide a basic understanding of Section 2701 to guide planners in determining whether Section 2701 applies to a particular transfer. It then provides guidance on techniques to avoid the application of Section 2701 generally, and for planning with funds and carried interests in particular. Finally, the article considers how these planning techniques can be used in conjunction with other more common estate planning techniques when planning with carried interests.


[Click here](#) for the full article, as originally published in the September 2018 issue of *California Trusts and Estates Quarterly*

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