Congress of the United States
Washington, DC 20515

August 2, 2012

The Honorable Emily McMahon
Acting Assistant Secretary for Tax Policy
U.S. Department of the Treasury
1111 Constitution Ave. NW
Washington, DC 20224

The Honorable Phyllis C. Borzi
Assistant Secretary of Labor,
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Dear Secretary McMahon and Secretary Borzi:

We are writing you out of concern about recent media reports indicating that some taxpayers may be avoiding the contribution limits for tax-preferred retirement accounts and plans by using very low asset valuations.

For example, recent news reports indicate that Bain Capital allowed service partners and employees to co-invest in investment deals via tax-preferred retirement accounts and plans such as IRAs and SEP-IRAs, in some cases providing one-fourth of the total capital in the investment deals.[1] Some experts have expressed the view that the investments made through these accounts and plans may have been assigned a nominal value that was significantly lower than the fair market value of the investments, perhaps using a liquidation value methodology.[2] In particular, this strategy has been cited as one explanation for how presidential candidate Mitt Romney's IRA is valued at between $20 and $101 million despite the annual contribution limits that apply to tax-preferred retirement accounts and plans.

The purpose for tax-preferred retirement accounts and plans is to encourage Americans to save for retirement. The accounts and plans are clearly not intended to serve as tax shelters for wealthy individuals to shield vast sums of money. This is why distributions from these accounts are generally required to begin at age 70 ½ and annual contributions are limited. We are troubled by tax avoidance techniques such as the use of a nominal valuation for investments made in tax–preferred retirement accounts and plans.

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[1] Maremont, Mark. (2012, March 29). "Bain Gave Staff Way to Swell IRAs by Investing in Deals." *Wall Street Journal*. Retrieved July 23, 2012 from http://professional.wsj.com/article/SB10001424052970204062704577223682180407266.html?mg=reno64-wsj.

[2] See e.g., Kleinbard, Edward D. and Peter C. Canellos. (2012, July 18). "Why won't Romney release more tax returns?" *CNN*. Retrieved July 23, 2012 from http://www.cnn.com/2012/07/18/opinion/kleinbard-canellos-romney-tax/index.html?hpt=hp_bn7.

We are concerned by the possibility that this activity could be widespread. This is a particularly opportune time to examine this issue as both Republicans and Democrats are moving towards tax reform.

In order to help us evaluate this issue in light of tax reform, we would appreciate your response to the following questions:

- What are the current standards related to the valuation of assets that are purchased by tax-preferred retirement accounts and plans? Is fair market value the standard, or are other valuations permissible? Is a liquidation valuation permissible?

- What proof are taxpayers required to submit if they are examined with respect to the value of assets held by tax-preferred accounts and plans when such assets are not publicly traded or the value cannot be established by reference to an established market?

- How many audits has the Internal Revenue Service conducted over the last 3 years regarding the valuation of assets held by tax-preferred retirement accounts and plans? Has the DOL engaged in any examination activity in this area, and if so, pursuant to what rules under ERISA?

- Does Treasury have an estimate of the "tax gap" that is attributable to low valuations of assets held by tax-preferred retirement accounts and plans?

- What safeguards are in place to avoid the mis-valuation of assets held in tax-preferred retirement accounts and plans when those assets are not publicly traded or valuation cannot be established by reference to an established market?

- What are your policy recommendations for addressing this issue?

As you can imagine, given the sacrifices that middle-class families have made in recent years, we are alarmed to learn that wealthy taxpayers may be taking advantage of a tax subsidy that is designed to provide for retirement to instead accumulate massive amounts of tax-sheltered assets. Given your commitment to the rule of law and equitable treatment of taxpayers, we hope that you will evaluate this issue carefully to ensure that a select few are not being provided with a loophole that allows for wrongful tax evasion.

Sincerely,

George Miller
Ranking Member
Committee on Education
and the Workforce

Sandy Levin
Ranking Member
Committee on Ways and Means

Chris Van Hollen
Ranking Member
Committee on the Budget