



*Excerpt from BVR's
Guide to Business Valuation
Issues in Estate and Gift Tax
2009 Edition*

*Astleford v. Commissioner
and table of all court case abstracts*

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Astleford v. Commissioner

Citation: T.C. Memo 2008-128
Court: United States Tax Court
State/Jurisdiction: Specialty Federal
Date of Decision: May 5, 2008
Judge: Swift

“In order to calculate the fair market value of limited partnership interests [the] petitioner transferred as gifts,” the Tax Court begins, in a nice preface to the issues presented in *Astleford v. Commissioner*:

...we must determine the fair market value of 1,187 acres of Minnesota farmland, whether a particular interest in a general partnership should be valued as a partnership interest or as an assignee interest, and the lack of control and lack of marketability discounts that should apply to the limited and to the general partnership interests.

In a lengthy opinion, the Tax Court considers the testimony of six appraisal experts, four for the taxpayer and two for the Internal Revenue Service. (The court does not name the business and real estate appraisers, referring to them simply as experts for either party.) It also considers the comparability of data from sales of publicly traded REITs (real estate investment trusts) to data from sales of registered RELPs (real estate limited partnerships) and—while declining to declare one dataset superior to the other—the court does examine which set of sales transaction data applies more to the facts and circumstances of the various Astleford family interests.

Analytical note. Of particular interest to appraisers: There are two “pearls” in the Astleford opinion. The first relates to the adoption of a fairly significant combined discount for lack or marketability and control related to a 50% general partnership interest. The second relates to the Tax Court’s acceptance of a significant “tiered” discount for the multiple ownership levels inherent in the real estate partnership/limited partnership interests.

Wealthy developer leaves all to wife

When M.G. Astleford died in 1995, he owned interests in over forty real properties located primarily in Minnesota. All of these passed through a marital trust to his wife, who formed the Astleford Family Limited Partnership (AFLP) in 1996 to “facilitate the continued ownership, development, and management” of the real estate interests and to facilitate gifts to the couple’s three adult children. At the time of its formation, Mrs. Astleford retained a 10% general partnership interest in AFLP and gave each of the children a 30% limited partnership (LP) interest. The limited partners made no capital contributions at the time of any gifts and received no voting rights; no outside party could join AFLP without the consent of the general partner, who also controlled all rights regarding the sale/transfer/partition of the partnership assets.

Mrs. Astleford initially funded the AFLP in 1996 with an eldercare facility (stipulated value of nearly \$900,000). In 1997, she transferred to AFLP her 50% general partnership interest in the Pine Bend Development Company (Pine Bend), which owned 3,000 acres of land, including 1,187 acres dedicated to farming (the Rosemount property). She gifted

additional LP shares in AFLP to her children to keep the 30-30-30 ownership configuration while maintaining herself as 10% general partner (GP) in AFLP.

In her 1996 and 1997 federal gift tax returns, Mrs. Astleford declared certain values and discounts related to her respective gifts to the children. On audit, the IRS found higher fair market values for several of the properties that funded AFLP and a higher net asset value (NAV) for the entire partnership. The IRS also decreased some of the marketability and lack of control discounts related to the gifted AFLP limited partnership interests. The taxpayer's versus the IRS's assessments are shown in the table below.

Year	Taxpayer's gift tax returns		IRS audit determinations	
	Taxable gifts	Gift tax liability	Taxable gifts	Gift tax liability
1996	\$277,441	\$79,581	\$626,898	\$127,619
1997	\$3,954,506	\$2,005,689	\$10,937,268	\$3,997,288

Through various pre-trial stipulations—and as the Tax Court neatly summarized at the start of its opinion, the parties disputed only three issues related to AFLP and its assets: 1) the fair market value of the Rosemount farmland; 2) whether the 50% Pine Bend interest should be valued as a GP or assignee interest; and 3) the applicability and amount of discounts for lack of control and lack of marketability to the gifted AFLP limited partnership interests.

'Market absorption' discount appropriate?

The taxpayer's real property appraiser considered the 1,187-acre Rosemount property to be "extraordinarily large and unique." In his market approach, he compared eighteen similar properties based on date of sale, location and size, and calculated an initial value for the Rosemount farmland of nearly \$3.7 million. But a sale of the entire property would flood the local market, he believed, reducing the per-acre price for farmland and requiring a market absorption discount. Assuming the property would sell over the course of four years and would appreciate 7% per year—and using a 25% discount rate to present value the expected cash flows, which was derived from a real estate development study—the expert's final fair market value for the farm property came to \$1,817 per acre for a total of \$2.16 million.

The IRS appraiser also used the market approach—comparing 125 Minnesota farmland properties and personally visiting twelve. He ultimately chose two comparables, adjusted only for dates of sale (because the properties were so similar to the subject), and arrived at a fair market value for the Rosemount farmland of \$3,500 per-acre or nearly \$4.16 million total, almost twice as much as the taxpayer's appraiser. The IRS expert further concluded that a market absorption discount was not appropriate. The Pine Bend partnership originally purchased the 1,187 acres in a single transaction, and thus (he believed) it could also sell the tract in its entirety. Even if an absorption discount was appropriate, the IRS expert considered the 25% present-value discount rate excessive. He cited a 1997 Minn. farm business management study that showed farmers in the region earning an average rate of return on equity of 9.2%.

The Tax Court found the IRS expert to be “particularly credible and highly experienced,” possessing a “unique knowledge” of the area. The court adopted his initial \$3,500 per-acre finding, but believed that due to the size of the property, a sale of all 1,187 acres in a single year merited a market absorption discount. The taxpayer’s discount was “unreasonably high,” however, because it relied on a 25% rate of equity return that real estate developers expected to earn. In another nod to the IRS expert, the court held that his 9.2% rate of return was based on what farmers in the area were “actually earning.” Rounding this figure up to 10%, applied over four years, the court found the farmland to be worth \$2,786 per acre for a total fair market value of nearly \$3.31 million.

Analytical note. The court indeed felt that it would be difficult for the surrounding market to absorb the 1,187 acres and applied the absorption discount. The court took exception, however, to the 25% discount rate because it was based on developers’ rates of return, which contemplate greater risk. But was the 9.2% rate (which the court rounded to 10%) plucked from the IRS expert the right rate? It was said to be based upon “the return on equity which farmers in the area were actually earning.” An alternate source would be the “going in discount rate” on agricultural property in the region available from a number of surveys published by national real estate consulting firms. That rate (with a slight increment for the risk of an uncertain time horizon and appreciation rate) might have resulted in a supportable discount rate somewhere between the 10% adopted by the court and the taxpayer’s 25%. Footnotes to the transcript reveal that experts for both sides accounted for transaction costs and periodic property taxes in their absorption analysis.

Discounts for a 50% GP and LP interests?

The taxpayer treated the 50% Pine Bend interest as an assignee interest, based primarily on the other 50% owner’s failure to consent to the transfer to the AFLP. Because, under Minn. law, an assignee would only have rights to Pine Bend’s profits—and no management control—the taxpayer’s expert, as a preliminary matter, discounted the assignee interest by 5%.

But the AFLP partnership resolution treated the Pine Bend transfer as one of all the taxpayer’s rights and interests, the IRS pointed out. Further, as AFLP’s sole general partner, the taxpayer was essentially in the same management position whether she transferred a GP or assignee interest. The substance of the transfer should trump its form, the IRS argued—and the court agreed, finding the taxpayer funded AFLP with a 50% general partnership interest.

To determine the discounts for lack of marketability and control for the 50% GP interest, the taxpayer’s expert examined comparable data from sales of registered real estate limited partnerships (RELPs). He identified trading discounts (differences between unit/share trading prices and unit/share NAVs) in 17 RELP comparables and established a range of 22% to 46% for a combined lack of marketability and control discount. But then, “without explaining further,” according to the court, the expert “abruptly concluded” that a 40% combined discount applied to the 50% interest.

The IRS expert believed that because the 50% GP interest was “simply an asset of AFLP,” the discounts he applied at the entity level obviated the application of discounts to the 50% interest. But in an interesting footnote, the court observed that in previous cases, the IRS (as well as the Tax Court) had applied layered discounts where a taxpayer held a minority interest in an entity that in turn owned a minority interest in another entity. “The

50-percent Pine Bend interest constituted less than 16% of AFLP's NAV and was only 1 of 15 real estate investments" that AFLP held at the time of the transfer, the court said. "[L]ack of control and lack of marketability discounts at both the Pine Bend level and the AFLP parent level are appropriate."

The court eliminated four of the RELP comparables that the taxpayer's expert selected because their data came from the wrong year (1999 instead of 1997, the year of the gift). The remaining data showed median and mean trading discounts of 30% to 36%, and a 1997 sample of 130 RELPs showed a 28.7% median and 30% mean discount. Thus the court concluded that a 30% combined discount applied to the 50% GP interest that the taxpayer transferred to the AFLP, valued at nearly \$1.3 million.

Analytical note. An interesting methodology disconnect occurs here. The discounts for lack of control and lack of marketability related to the Pine Bend GP interest are estimated and applied on a combined basis, whereas on the overall AFLP interest discussed below, they are estimated and applied separately.

The BV profession has frequently struggled with the concept of lack of control and marketability discounts for 50% interests. Such interests generally do not enjoy control, but they clearly do not experience the same lack of control suffered by lesser interests. With little empirical data to go on, many experts have opined that the discounts do apply to a 50% interest, just to a lesser degree. Given this, the resulting 30% would appear relatively high, especially when compared to the combined discounts for lack of control and marketability of 34% applied to the subject 30% LP interest in AFLP.

It is at this point the court first discusses the appropriateness of discounting an entity inside an entity or "tiered" discounts. This has been another challenge for our profession. Many experts have put forth that if such a discount applies it must certainly be reduced. The justification frequently appears to be no more than their concern for letting the taxpayer get away with too much of a good thing. Here it seemed important to the court that Pine Bend was not the primary asset of AFLP, and it did not explicitly limit its discount based on the tiered structure of the entities.

LP discounts turn on selected comparables

In determining discounts for gifts of the limited partnership interests in AFLP, the taxpayer's expert first looked at nine RELP comparables, which had an average trading discount of 38%. Of these, four RELPs were "most comparable," with trading discounts ranging from 40% to 47%. Ultimately the expert settled on a lack of control discount for the LP interests of 45% for the first gift year (1996) and 40% for the second (1997).

But the expert's nine RELP comparables were "significantly more leveraged," the court observed, demonstrating debt-to-NAV ratios of 82% to 205% compared to AFLP's more moderate leverage of 52% debt-to-NAV. Of his selected four comparables—which he considered most similar—two had NAV's approximately five times AFLP's NAV, and the other two were "even more leveraged." Because AFLP held less debt and was inherently less risky than the comparables, the court found the taxpayer's 45% and 40% discounts "unlikely." Moreover, because AFLP's cash distribution rate was significantly higher than the average rate of the RELPs—10% versus 6.7%—the court found that under his own approach, which conceded less risk to companies with higher cash distributions—the expert's discounts should be lower than the 38% average that he observed among the

comparables. The RELP comparables were “too dissimilar” to AFLP to warrant the reliance that the taxpayer’s expert placed on them, the court ruled, and his combined discounts for the LP interests were “excessive.”

Rather than “[sift] through the RELP data looking for more appropriate RELPs to serve as comparables,” the court turned to the IRS expert, who examined comparability data from sales of REITs. It declined to declare either the REIT or RELP data superior to the other, since prior courts have accepted expert valuations derived from both. In considering the facts of this case, the court found that RELPs more closely resembled AFLP and also the Pine Bend partnership in size, marketability, management, distribution requirements, and taxation. The low trading volume of RELPs on the secondary market also did not disqualify their data.

By comparison, the abundance of REIT sales “tends to produce more reliable data,” the court noted. Any differences between REITs and the subject partnerships could be minimized by having a larger pool of REIT comparables from which to choose, and by subjecting the comparables to a methodology that accounts for their greater liquidity. In analyzing REIT data in this context, the court explained, it is appropriate to back out of their trading prices any liquidity premiums, resulting in lack of control discounts.

Taking this approach, the IRS expert obtained sales data for 75 REIT comparables, which showed that in 1996 they traded at a median 0.1% premium over per-share NAV and a 1.2% discount under per-share NAV in 1997. Using regression analysis, he concluded that REITs generally traded at a 7.79% liquidity premium over private real estate partnerships. He combined this observed premium with the respective 1996/1997 trading data to arrive at a lack of control discount for the AFLP limited partnership interests of 7.14% in 1996 and 8.34% in 1997.

Method was misapplied

The court agreed with the IRS expert’s method but held that on their face, his discounts appeared unreasonably low. Moreover, other studies cited by the expert suggested that the applicable liquidity premiums were nearly two times the levels he used.

A better method to derive liquidity premiums is to look at the difference in average discounts observed in private placements of registered and unregistered stock, since a public market is available to the former but not the latter. According to two studies cited by the IRS expert, this difference amounted to approximately 14%, which resulted in a general liquidity premium of 16.27% inherent in publicly traded assets and also applicable to REITs. (If an illiquid asset trades at a discount of 14% relative to a liquid asset, then the liquid asset is trading at a relative 16.27% premium, or $1/[1 - 0.14]-1 = 0.1627$.)

The court eliminated or backed out this 16.27% liquidity premium from the median REIT trading data provided by the IRS expert, subtracting the .1% in 1996 and adding the 1.2% in 1997 to arrive at a lack of control discount for the AFLP partnership interests of 16.17% and 17.47%, respectively.

Analytical note. A number of interesting things can be observed here. First the Court states that it has no opinion whether RELP or REIT data are more representative for purposes of estimating the discounts appropriate for an FLP. Then it says that RELPs more closely resemble the attributes inherent in AFLP. But it also observes that the capital structure of the RELPs selected by the taxpayer’s expert are dissimilar to that of AFLP and reject them.

With an insufficient number of remaining RELPs to work with, the Court resorts to using the REIT data largely because there is so much of it.

This reasoning first appeared in McCord v. Comm'r (2003): that an absence of comparable data can be overcome by an abundance of incomparable data. With the move to the REIT data comes the need to uncouple the REIT discount or premium from the liquidity premium inherent in the REIT market prices. (Analyst's tip: There are less cumbersome ways to utilize REIT data to estimate a discount for lack of control. Hint: The Mergerstat®/BVR Control Premium Study™ includes REIT takeover transactions.)

The discounts computed in this way by the IRS expert are rejected by the court merely because they "appeared unreasonably low." That's all. Too low. The court then performed its own analysis of privately placed registered and unregistered stock to derive a liquidity premium. You can't help but wonder whether the court had some unstated benchmark lack of control discount in mind hovering in the plus or minus 20% range.

Final conclusions of value

As a final matter, the Tax Court compared the taxpayer's estimate of a 15% marketability discount for the 1996 limited partnership gifts to the IRS's 21.23% and saw "no reason" not to adopt the higher discount. The parties stipulated to a 22% marketability discount for the 1997 gifts and the court adopted these as well. In conclusion, it found that the fair market value of each of the taxpayer's three gifts of 30% limited partnership interests to her children were worth \$172,525 in 1996, for a total taxable gift of \$517,575; and that the fair market value of each 1997 gift of a 30% limited partnership interest was worth \$2,188,404, for a total gift value of \$6,565,215.

Analytical note. We are not told how either the taxpayer or the IRS computed their lack of marketability discounts of 15% and 21.23%, respectively. We only know that without discussion of the relative merits of either's methodologies, the court could "perceive no reason not to use [the IRS's] higher marketability discount" and rounded it up to 22%. Maybe 15% was unreasonably low.

In summary, we can take away that the discounts related to both 50% interests and tiered entities are not necessarily restricted relative to other holdings and that in the final analysis, courts make their decisions based as much on their perception of reasonableness as rigorous analysis. Overall, however, this analyst thinks the Tax Court pretty much got this one right.

The analytical notes in this abstract were provided by Theodore D. Israel, CPA/ABV, CVA, Eckhoff Accountancy Corporation, www.eckhoff.com.

Court Case Abstracts

Case Name	Date	Court	State / Jurisdiction	Judge	Comments	Page
Abraham, Estate of, v. Comm'r (I)	02/18/04	United States Tax Court	Specialty Federal	Ruwe	The Tax Court determined that IRC sec. 2036 should apply to recapture the value of the assets transferred to three family limited partnerships. The First Circuit affirmed all aspects of the Tax Court determination as unfavorable to the estate.	2-248
Abraham, Estate of, v. Comm'r (II)	05/25/05	United States Court of Appeals	1st Circuit Federal	Lynch		2-274
Adams v. United States (I)	03/17/99	United States District Court	Northern District of Texas	Fitzwater	The District Court concluded that valuation discounts for marketability, minority interest, uncertain rights and undesirable mix of assets were inappropriate because an assignee had a right to received its pro rata share of the partnership's net asset value. The Fifth Circuit remanded the case back to the District Court stating that the District Court must consider evidence by both parties.	2-188
Adams v. United States (II)	05/07/00	United States Court of Appeals	5th Circuit Federal	Fitzwater		2-74
Adams v. United States (III)	08/27/01	United States District Court	Texas	Fitzwater		2-119
Adams, Estate of, v. Comm'r	03/28/02	United States Tax Court	Specialty Federal	Colvin	The Tax Court considered the valuation of a controlling block of stock in a S corporation.	2-166
Amlie, Estate of, v. Comm'r	04/17/06	United States Tax Court	Specialty Federal	Gale	The Tax Court determined that a buy-sell agreement satisfied sec. 2703 and the Lauder test such that it fixed the value of a minority interest in closely held bank stock for estate tax purposes.	2-302
Anderson, W.G. v. United States	12/28/05	United States District Court	Western District of Louisiana	Hicks	The issues concerned DLOM, market approach valuation of interests, starting value, and choice of comparables.	2-292

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Case Name	Date	Court	State / Jurisdiction	Judge	Comments	Page
Armstrong, Estate of, v. United States (I)	02/24/00	United States District Court	Western District of Virginia	Crigler	The District Court denied the estate a valuation reduction for estate taxes and attendant costs paid by the estate after the gifts had been included in the decedent's gross estate because the gifts were included in the decedent's gross estate. The Appellate Court affirmed that a donee seeking to invoke the net gift doctrine must demonstrate that payment of the gift taxes was a condition of the gift at the time of the transfer, and that the obligation was not contingent, speculative, or illusory.	2-110
Armstrong, Estate of, v. United States (II)	01/15/02	United States Court of Appeals	4th Circuit Federal	Motz		2-182
Astleford v. Comm'r	05/05/08	United States Tax Court	Specialty Federal	Swift	The Tax Court decided on a case involving family limited partnerships and "layered" real estate holding entities. The Court considered the comparable data from sales of publicly-traded REITS to sales of registered RELPS and accepted a sizeable combined discount for DLOM and control for a 50% general partnership interest; and a fairly substantial discount for the "tiered" ownership interests in the RELP.	2-347

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Case Name	Date	Court	State / Jurisdiction	Judge	Comments	Page
Atkinson, Estate of, v. Comm'r	10/16/02	United States Court of Appeals	11th Circuit Federal	Per Curiam	The Court of Appeals determined that an estate may not make a charitable deduction for an amount passing from a charitable remainder annuity trust (CRAT) to the charity when the CRAT regulations are not followed from formation through termination.	2-214
Auker, Estate of, v. Comm'r	05/19/98	United States Tax Court	Specialty Federal	Laro	The Tax Court handed down a five-point test for use when considering a market absorption discount.	2-55
Bailey, Estate of, v. Comm'r	06/17/02	United States Tax Court	Specialty Federal	Thorn-ton	The Tax Court considered the valuation of two 25 percent interests in a corporation that owned and operated motels.	2-202
Baird, Estate of, v. Comm'r (I)	09/28/01	United States Tax Court	Specialty Federal	Gerber	Relying primarily on one of the estate's three experts, a buyer-seller of fractional interests who considered twelve factors in the determination of the discount, the court concluded that the record and the expert's reports supported a fractional interest discount of 60%.	2-174

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Case Name	Date	Court	State / Jurisdiction	Judge	Comments	Page
Baird, Estate of, v. Comm'r (II)	07/11/05	United States Court of Appeals	5th Circuit Federal	Jolly	The Fifth Circuit reversed and remanded on the issue of costs. It found that before the IRS issued the notices of deficiency, the taxpayers had provided enough information to the IRS to alert it to the fact that the in-kind partition described in the forester's report was not viable. The court also concluded that the IRS's estimate of the costs of a hypothetical in-kind partition was speculative and unsupported.	2-279
Barge v. Comm'r	04/23/97	United States Tax Court	Specialty Federal	Halpern	The Tax Court used a classic DCF model to determine the value of an undivided interest in timberland.	2-34
Barnes v. Comm'r	11/17/98	United States Tax Court	Specialty Federal	Colvin	The Tax Court valued gifts of less than a one% interest in two closely held regional telephone companies.	2-67
Barudin, Estate of, v. Comm'r	08/26/96	United States Tax Court	Specialty Federal	Swift	IRS expert cited unnamed market studies indicating 25.8% to 45% marketability discount range.	2-26
Berry, Estate of, v. Comm'r	04/24/07	United States Tax Court	Specialty Federal	Flaherty	The Tax Court found the FLP served no legitimate business purpose, and affirmed the state's denial of estate tax discounts.	2-326

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Case Name	Date	Court	State / Jurisdiction	Judge	Comments	Page
Bigelow, Estate of, v. Comm'r (I)	03/30/05	United States Tax Court	Specialty Federal	Colvin	The Tax Court applied sec. 2036(a) to recapture the value of real property transferred by a decedent to a family limited partnership. The Ninth Circuit failed to accept the "per se" rule and determined that the criteria for the "bona fide sale" exception are interrelated with the inquiry into the family limited partnership's "legitimate" (non-tax) business purpose.	2-272
Bigelow, Estate of, v. Comm'r (II)	09/14/07	Court of Appeals	9th Circuit Federal	Gould		2-335
Blount, Estate of, v. Comm'r (I)	05/12/04	United States Tax Court	Specialty Federal	Gale	The Tax Court rejected the estate's position that a buy-sell agreement fixed the value of the stock for estate tax purposes because the agreement was not similar to comparable agreements entered into by parties at arms'-length and because the decedent could unilaterally alter the agreement in life. The Eleventh Circuit affirmed the Tax Court's decision that the buy-sell agreement could not set the value of BCC for estate tax purposes, but reversed on the inclusion of the insurance proceeds as nonoperating assets.	2-252
Blount, Estate of, v. Comm'r (II)	10/31/05	United States Court of Appeals	11th Circuit Federal	Birch		2-287
Bommer Revocable Trust v. Comm'r	08/20/97	United States Tax Court	Specialty Federal	Ruwe	The Tax Court concluded that a buy/sell agreement was not controlling for estate tax purposes.	2-38
Bongard, Estate of, v. Comm'r	03/15/05	United States Tax Court	Specialty Federal	Goeke	The Tax Court issued a two prong analysis for determining whether the bona fide sale for adequate and full consideration exception to sec. 2036 is satisfied.	2-270

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Case Name	Date	Court	State / Jurisdiction	Judge	Comments	Page
Bonner, Estate of, v. United States	06/04/96	United States Court of Appeals	5th Circuit Federal	Per Curiam	The Fifth Circuit reversed the Tax Court and found that fractional interest discounts should be applied.	2-21
Borgatello, Estate of, v. Comm'r	08/18/00	United States Tax Court	Specialty Federal	Wells	The Tax Court valued a real estate holding company using the net asset value method.	2-124
Bosca, Estate of, v. Comm'r	07/08/98	United States Tax Court	Specialty Federal	Whalen	The Tax Court rejected petitioner's argument that no value was transferred when the decedent exchanged voting common stock for nonvoting common stock in a closely-held corporation.	2-61
Branson, Estate of, v. Comm'r (I)	07/13/99	United States Tax Court	Specialty Federal	Parr	The Tax Court determined that the estate underreported the value of the stock for estate tax purposes, but permitted the heir to offset the overpaid capital gains taxes against the estate tax owed. The Court of Appeals determined that an estate was entitled to recoup capital gains taxes paid by the heir in connection with the sale of the estate's stock.	2-87
Branson, Estate of, v. Comm'r (II)	09/05/01	United States Court of Appeals	9th Circuit Federal	Sneed		2-170
Brocato, Estate of, v. Comm'r	12/29/99	United States Tax Court	Specialty Federal	Vasquez	The parties determined the size of the blockage discount by reference to the average time on the market, and used the discounted cash-flow method to account for the additional time on the market.	2-104

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Case Name	Date	Court	State / Jurisdiction	Judge	Comments	Page
Brookshire, Estate of, v. Comm'r	10/08/98	United States Tax Court	Specialty Federal	Swift	The Tax Court accepted the undiscounted value proposed by the estate's first expert which was computed using three valuation methods—the guideline company method, the discounted cash flow method, and the capitalization of earnings method.	2-65
Cartwright, Estate of, v. Comm'r (I)	06/20/96	United States Tax Court	Specialty Federal	Colvin	The Tax Court decision turned on the Court's interpretation of the shareholder agreement and past transactions with withdrawing members of the firm. The Appellate Court affirmed the use of the 1973 buy-sell agreement to value the stock but reversed that valuation for the inclusion of advanced client costs and works in progress as assets of the practice.	2-21
Cartwright, Estate of, v. Comm'r (II)	07/12/99	United States Court of Appeals	9th Circuit Federal	Silverman		2-85
Casey, Estate of, v. Comm'r	03/27/96	United States Tax Court	Specialty Federal	Gerber	The Tax Court declined to apply a discount for lack of control to a fractional interest in a liquidating trust, whose beneficiaries had relinquished control of the assets to the trustee; thus, creating a unity of ownership.	2-20
Cavallaro v. United States	04/01/02	United States Court of Appeals	1st Circuit Federal	Lynch	The Court of Appeals considered whether an accountant's communications regarding transfer tax and merger issues were privileged communications.	2-191

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Case Name	Date	Court	State / Jurisdiction	Judge	Comments	Page
Church v. United States (I)	01/18/00	United States District Court	Texas	Garcia	Court rejected the IRS' position that a gift tax was due on the formation of an FLP two days prior to the decedent's death. The partnership was formed for bona fide business purposes.	2-108
Church v. United States (II)	07/18/01	United States Court of Appeals	5th Circuit Federal	Per Curiam		2-164
Cidulka, Estate of, v. Comm'r	03/25/96	United States Tax Court	Specialty Federal	Scott	The Tax Court valued the company using the an income capitalization method where the income multiplier was determined by reference to comparable transactions.	2-17
Cloutier, Estate of, v. Comm'r	02/13/96	United States Tax Court	Specialty Federal	Laro	The Tax Court failed to apply a marketability discount and found fault with the estate's appraiser for failing to consider a control premium, for writing a brief report, and for looking solely at the willing seller to the detriment of the willing buyer.	2-11
Cook, Estate of, v. Comm'r (I)	07/09/01	United States Tax Court	Specialty Federal	Gerber	Partnership formed solely for the purposes of holding cash and the right to future lottery payments. Valued according to annuity tables without marketability discount. The Court of Appeals considered whether deviation from the annuity tables in Sec. 7520 was warranted in the valuation of a lottery prize.	2-162
Cook, Estate of, v. Comm'r (II)	11/13/03	United States Court of Appeals	5th Circuit Federal	Duhe		2-243
Costanza, Estate of, v. Comm'r	02/19/03	United States Court of Appeals	9th Circuit Federal	Gilman	The Court of Appeals determined that an intrafamily transaction involving a self-canceling installment note (SCIN) was a bona fide transaction within the meaning of IRC sec. 2001(b).	2-220

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Case Name	Date	Court	State / Jurisdiction	Judge	Comments	Page
Cullison, Estate of, v. Comm'r	06/17/98	United States Tax Court	Specialty Federal	Parr	The Tax Court determined that the taxpayer's accountant provided them with faulty advice and improperly valued an annuity by failing to use the interest rate required by the treasury regs.	2-57
D'Ambrosio, Estate of, v. Comm'r	11/26/96	United States Court of Appeals	3rd Circuit Federal	Nygaard	The Third Circuit reversed the Tax Court and concluded that the decedent received adequate consideration under IRC sec. 2036 when she exchanged her stock for an annuity.	2-30
Dailey, Estate of, v. Comm'r (I)	10/03/01	United States Tax Court	Specialty Federal	Foley	This case involves both gift and estate tax matters, because the decedent dies shortly after gifting 45% and 15% interests, retaining a 40% interest in the estate. In a later proceeding, the taxpayer was not awarded costs related to the issue of discounts, even though the taxpayer won on that issue, because the IRS was substantially justified in maintaining its position and has a reasonable basis in law and fact.	2-175
Dailey, Estate of, v. Comm'r (II)	12/09/02	United States Tax Court	Specialty Federal	Foley		2-215
Dallas v. Comm'r	09/28/06	United States Tax Court	Specialty Federal	Colvin	The Tax Court agreed with the IRS' position that the inter-family transfers were "bargain gifts." Also determined that S corporations should not be tax-affected.	2-318

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Case Name	Date	Court	State / Jurisdiction	Judge	Comments	Page
Davenport v. United States	10/18/05	United States District Court	Southern District of Texas	Froeschner	The District Court excluded an expert's valuation because it failed to take into account the fact that the donor of the gifted stock did not have clear title to that stock because the stock was the subject of estate tax litigation from the donor's grantor.	2-286
Davis v. United States (I)	12/19/05	United States District Court	New Hampshire	McAuliffe	Court assesses whether fair market value of non-marketable annuity varies from present value of IRC annuity tables. The District Court held that the value determined under the annuity tables was the proper value of the lottery payments.	2-289
Davis v. United States (II)	06/13/07	United States District Court	New Hampshire	McAuliffe		2-331
Davis, Estate of, v. Comm'r	06/30/98	United States Tax Court	Specialty Federal	Chiechi	The Tax Court criticized IRS expert for not considering all restricted stock and pre-IPO studies.	2-59
Deputy, Estate of, v. Comm'r	06/13/03	United States Tax Court	Specialty Federal	Gerber	The Tax Court based its discounts on a unique combined discount matrix designed to "replicate an investor's decision process."	2-227
Desmond, Estate of, v. Comm'r	03/10/99	United States Tax Court	Specialty Federal	Vasquez	The Tax Court valued a controlling interest in a paint and coatings manufacturing company using the discounted future cash flow and market comparables approaches.	2-73
DiSanto, Estate of, v. Comm'r	12/27/99	United States Tax Court	Specialty Federal	Colvin	The Tax Court determined that a post-valuation date redemption between the decedent's children and the company as well as the company's subsequent bankruptcy was not probative.	2-102

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Disbrow, Estate of, v. Comm'r	02/28/06	United States Tax Court	Specialty Federal	Laro	The Tax Court determined that sec. 2036(a) applied to recapture of the value of a residence transferred to a general partnership and leased to the decedent.	2-296
Dockery v. Comm'r	03/19/98	United States Tax Court	Specialty Federal	Colvin	The Tax Court rejected both trial experts and adopted the valuation report filed with the gift tax returns.	2-50
Dunn, Estate of, v. Comm'r (I)	01/12/00	United States Tax Court	Specialty Federal	Gale	The Tax Court considered the valuation of a majority interest in a heavy equipment rental company. The IRS argued that due to the large disparity between the asset and earnings valuations that the asset value should be used and the earnings value should be disregarded, but the Tax Court rejected this argument because the company was an operating company properly valued under the earnings approach.	2-106
Dunn, Estate of, v. Comm'r (II)	08/01/02	United States Court of Appeals	5th Circuit Federal	Wiener	The Court of Appeals reversed the Tax Court decision by ruling that 100% of the built-in capital gains tax should be recognized when determining the fair market value of a corporation under the asset approach, but should not be considered when determining the fair market value of stock under an earnings approach.	2-206
Eddy, Estate of, v. Comm'r	08/16/00	United States Tax Court	Specialty Federal	Parr	The Tax Court refused to permit the estate to use the alternate valuation date because the estate's tax return was filed beyond the time prescribed by law.	2-123

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Eisenberg v. Comm'r (I)	10/27/97	United States Tax Court	Specialty Federal	Hamblen	The Tax Court refused to permit the taxpayer to apply a discount for built-in capital gains tax because the parties stipulated that a liquidation of the company was not foreseeable. The Court of Appeals reversed the Tax Court decision and concluded that a discount for built-in capital gains could be applied when valuing gifts of stock for the gift tax.	2-42
Eisenberg v. Comm'r (II)	08/18/98	United States Court of Appeals	2nd Circuit Federal	Carman		2-62
Erickson, Estate of, v. Comm'r	04/30/07	United States Tax Court	Specialty Federal	Kroupa	The Tax Court held that the bona fide sale exception did not apply and the assets transferred to the FLP should be included in the value of the decedent's gross estate under § 2036.	2-327
Ferguson, Estate of, v. Comm'r	04/07/99	United States Court of Appeals	9th Circuit Federal	Choy	The Court of Appeals affirmed the Tax Court's finding that the donated stock had ripened into a right to receive the amount offered for the stock in the tender offer.	2-80
Fleming, Estate of, v. Comm'r	10/27/97	United States Tax Court	Specialty Federal	Chiechi	In valuing the business, the Tax Court considered pre-valuation date sales when applying a premium to the company's trade note receivables, and it applied both marketability and minority interest discounts.	2-43
Fontana, Estate of, v. Comm'r	03/28/02	United States Tax Court	Specialty Federal	Foley	The Tax Court determined that at the time of death the decedent "had control and power of disposition over the property" and upheld the IRS's determination that the stock should be aggregated.	2-190

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Foote, Estate of, v. Comm'r	02/05/99	United States Tax Court	Specialty Federal	Jacobs	The Tax Court permitted a blockage discount of 3.3% on the decedent's 2.2% interest in a NYSE stock.	2-70
Forbes, Estate of, v. Comm'r	03/23/01	United States Tax Court	Specialty Federal	Thornton	The Tax Court rejected the IRS's calculation of the discount, which was determined based on comparable sales, because the sales were distant in both locale and time from the valuation date.	2-144
Ford, Estate of, v. Comm'r	12/08/93	United States Tax Court	Specialty Federal	Chiechi	The Tax Court rejected the estate's expert because he valued the holding companies using weighted combination of earnings and asset approaches.	2-4
Freeman, Estate of, v. Comm'r	08/13/96	United States Tax Court	Specialty Federal	Halpern	The Tax Court disregarded the estate's expert because he failed to explain his valuation approaches or supply information regarding his selection of comparable companies.	2-25
Furman v. Comm'r	04/30/98	United States Tax Court	Specialty Federal	Beghe	The Tax Court accepted a valuation of the company using the EBIDTA multiple method including discounts for key person, marketability and minority interests.	2-52
Gavin, Estate of, v. United States	05/08/97	United States Court of Appeals	8th Circuit Federal	Magill	The Eighth Circuit reversed the District Court and permitted an IRC. Sec. 2032A election.	2-36
Gilford, Estate of, v. Comm'r	01/12/87	United States Tax Court	Specialty Federal	Hamblen	The value of publicly-traded stock was determined by reference to the average daily trading price, adjusted for blockage and its restricted status.	2-1

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Gimbel, Estate of, v. Comm'r	12/19/06	United States Tax Court	Specialty Federal	Swift	The valuation of a large block of restricted public shares with the Tax Court concluding the appropriate methodologies, marketability discounts, and consideration of post-valuation events.	2-323
Gloeckner, Estate of, v. Comm'r (I)	03/25/96	United States Tax Court	Specialty Federal	Halpern	The Tax Court determined that a redemption agreement did not control the fair value market of the decedent's stock for estate tax purposes. The Court of Appeals reversed the Tax Court decision by concluding that the kin did not benefit from the agreement and that the relationship was a business relationship, not a kinship relationship.	2-18
Gloeckner, Estate of, v. Comm'r (II)	08/18/98	United States Court of Appeals	2nd Circuit Federal	Cardamone		2-63
Glover, Estate of, v. Comm'r	08/02/02	United States Tax Court	Specialty Federal	Jacobs	In considering the value of a malpractice claim, the Court deviated from its normal position and used a post-valuation date settlement, as stipulated by the parties, as the starting point for the claim valuation.	2-208

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Godley, Estate of, v. Comm'r (I)	08/04/00	United States Tax Court	Specialty Federal	Gale	The Tax Court valued five 50% partnership interests, which were all subject to buy-sell agreements. The buy-sell agreements were disregarded for valuation purposes because they were found to be testamentary devices.	2-120
Godley, Estate of, v. Comm'r (II)	04/15/02	United States Court of Appeals	4th Circuit Federal	Wilkinson	The Tax Court applied a marketability discount, but not a minority discount. The Court of Appeals held that the Tax Court did not err in refusing to apply a minority discount to the decedent's 50% interests.	2-194
Gray, Estate of, v. Comm'r	02/05/97	United States Tax Court	Specialty Federal	Colvin	In reaching a decision, the Tax Court listed a twelve-question analysis to determine whether a transfer was a dividend or a loan.	2-33
Green, Estate of, v. Comm'r	12/29/03	United States Tax Court	Specialty Federal	Thornton	The Tax Court considered the valuation of a minority interest in a closely held commercial bank with the block being valued using the discounted net income, public company guideline, and comparable transaction approaches.	2-244
Gribauskas, Estate of, v. Comm'r	08/26/03	United States Court of Appeals	2nd Circuit Federal	Van Graafeiland	The Court of Appeals reversed the Tax Court's valuation of lottery payments finding that deviation from the annuity tables was warranted under the facts of this case and concluded that a lack of marketability discount was appropriate.	2-236

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Gross v. Comm'r (I)	07/29/99	United States Tax Court	Specialty Federal	Halpern	The Tax Court determined whether it was appropriate to tax affect earnings in determining the share value using the discounted cash flow method. The majority of the Court of Appeals decided that tax affecting was not appropriate in this case.	2-89
Gross v. Comm'r (II)	11/19/01	United States Court of Appeals	6th Circuit Federal	Cohn		2-177
Hackl v. Comm'r (I)	03/17/02	United States Tax Court	Specialty Federal	Nims	The Tax Court determined that the annual gift tax exclusion was inapplicable because the gifts were gifts of future interests. The Court of Appeals affirmed the Tax Court decision, holding that the restrictions on transfer in the operating agreement meant that the gifted shares were "essentially without immediate value to the donees."	2-187
Hackl v. Comm'r (II)	07/11/03	United States Court of Appeals	7th Circuit Federal	Evans		2-233
Harper, Estate of, v. Comm'r (I)	06/30/00	United States Tax Court	Specialty Federal	Wells	The Tax Court determined that a limited partnership's liquidation restrictions were not more stringent than the applicable state law. The Tax Court found that the commingling of funds, history of disproportionate distributions and testamentary intent in the FLP's formation supported the inclusion of the assets in the decedent's estate.	2-118
Harper, Estate of, v. Comm'r (II)	05/15/02	United States Tax Court	Specialty Federal	Nims		2-196

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Heck, Estate of, v. Comm'r	02/05/02	United States Tax Court	Specialty Federal	Halpern	The Tax Court rejected a valuation using the public guideline company approach based on two comparables in similar lines of business because this was too few comparables to make a valid comparison.	2-183
Helis, Succession of, v. United States (I)	07/03/01	United States Court of Federal Claims	Federal Claims	Bruggink	The Court of Federal Claims rejected the minority discount because the IRS applied it to only the real property assets of the partnership rather than all the partnership's assets, and because the IRS found more control than warranted in a 50% interest.	2-156
Helis, Succession of, v. United States (II)	01/08/03	United States Court of Federal Claims	Federal Claims	Bruggink	The Federal Court of Claims determined that interest paid to the IRS under sec. 6166 and deducted by the estate under sec. 2503, but later refunded, should be added back when making the final estate accounting.	2-216
Hendrickson, Estate of, v. Comm'r	08/23/99	United States Tax Court	Specialty Federal	Beghe	The Tax Court rejected a valuation performed using the DCF method because it concluded that the CAPM was not appropriate for valuing small closely held companies. It additionally took issue with the calculation of Beta and the application of a small stock capitalization premium.	2-93
Hess v. Comm'r	08/20/03	United States Tax Court	Specialty Federal	Ruwe	The Tax Court did not rely on any one valuation put forward by the experts in arriving at its valuation conclusion.	2-234

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Hewitt v. Comm'r	10/29/97	United States Tax Court	Specialty Federal	Tannenwald, Jr.	The Tax Court concluded that a taxpayer who donated stock to a charitable organization was not entitled to a deduction greater than their basis in the stock.	2-45
Hillgren, Estate of, v. Comm'r	03/03/04	United States Tax Court	Specialty Federal	Cohen	Factors considered by the Tax Court included the commingling of personal and business funds, negotiation over the FLP agreement, post-death adjustments to the FLPS books, among others.	2-249
Hjersted, Norman B, Estate of, In the Matter of (I)	06/02/06	Court of Appeals	Kansas	Sundby	Concerns the application of discounts to an FLP that one spouse creates to disinherit the other. The Court of Appeals held that discounts for lack of marketability and control did not apply to a family limited partnership. On remand, the Trial Court should consider whether the wife's situation was comparable to a minority shareholder and entitled to an undiscounted value, the Supreme Court said.	2-308
Hjersted, Norman B, Estate of, In the Matter of (II)	02/01/08	Supreme Court	Kansas	N/A		2-343
Hoffman, Estate of, v. Comm'r	05/09/01	United States Tax Court	Specialty Federal	Ruwe	The Tax Court considered the valuation of promissory notes, a minority interest in a family partnership holding real estate, and a minority interest in a real estate development S corporation.	2-150

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Holman v. Comm'r	05/27/08	United States Tax Court	Specialty Federal	Halpern	The Tax Court determined 1) whether the transfer of assets constituted a direct or indirect gift; 2) whether the limited partnership should be treated (and valued) analogous to a trust; and 3) what discounts for lack of control and marketability apply to the gifts.	2-353
Hoover, Estate of, v. Comm'r	11/01/95	United States Court of Appeals	10th Circuit Federal	N/A	The Court of Appeals confirmed that the concept of fair market value includes a discount for lack of marketability and control for purposes of Section 2032A.	2-9
Huber v. Comm'r	05/09/06	United States Tax Court	Specialty Federal	Goeke	The Tax Court determined that the value of closely held stock was established by the price used in recent transaction of that stock for gift tax purposes where that price was established by an appraisal obtained by the subject company for its internal purposes.	2-304
Hughes, Estate of, v. Comm'r	12/27/05	United States Tax Court	Specialty Federal	Colvin	The Tax Court determined that the amount paid on a demand note after the death of the decedent was not deductible under sec. 2053 as a claim against the estate because the transaction was not bona fide nor completed at arm's-length.	2-291

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Jameson, Estate of, v. Comm'r (I)	02/09/99	United States Tax Court	Specialty Federal	Gale	The Tax Court concluded that the net asset approach was the appropriate valuation method and included a discount for the built-in capital gains tax on the underlying timber property.	2-71
Jameson, Estate of, v. Comm'r (II)	09/18/01	United States Court of Appeals	5th Circuit Federal	Jones	The Court of Appeals reversed the Tax Court decision ruling that the court improperly particularized the hypothetical buyer as a strategic buyer of decedent stock.	2-171
Janda v. Comm'r	02/02/01	United States Tax Court	Specialty Federal	Vasquez	The Tax Court criticized both restricted stock studies and QMDM as used in this case. Experts also applied a 10% minority discount.	2-136
Janis v. Comm'r	08/21/06	United States Court of Appeals	9th Circuit Federal	McKeown	The Ninth Circuit affirmed the Tax Court's determination of the fair market value of an inherited art collection for partnership basis purposes, inclusive of a blockage discount.	2-313
Jelke, Estate of, v. Comm'r (I)	05/31/05	United States Tax Court	Specialty Federal	Gerber	The Tax Court calculated the built-in capital gains tax discount by reference to a time-value of money analysis, which considered the turnover rate of the company's stock portfolio. The Court of Appeals approved a "dollar-for-dollar" reduction for the entire built-in capital gains tax liability of a minority interest in a closely held corporation, overruling the Tax Court's prior allowance of only a partial discount.	2-276
Jelke, Estate of, v. Comm'r (II)	11/15/07	Court of Appeals	United States	Hill		2-337

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Jones, Estate of, v. Comm'r	03/06/01	United States Tax Court	Specialty Federal	Cohen	The Tax Court determined the value of limited partnerships in two FLPs using the net asset value method less discounts for secondary market, lack of marketability, and built-in capital gains.	2-139
Jung, Estate of, v. Comm'r	11/10/93	United States Tax Court	Specialty Federal	Chabot	The Tax Court valued a medical textiles manufacturing company using the discounted cash flow method.	2-2
Kahn, Estate of, v. Comm'r	11/17/05	United States Tax Court	Specialty Federal	Goeke	The Tax Court concluded that a discount was not applicable to individual retirement accounts (IRAs) to account for the built-in gains that would be taxable to estate or beneficiaries upon their distribution.	2-288
Kaufman, Estate of, v. Comm'r (I)	04/06/99	United States Tax Court	Specialty Federal	Laro	The Tax Court rejected both experts for a variety of reasons including failure to adequately describe comparable companies, failure to address the aspects of control held by the block when determining the marketability discount, and failure to consider the net asset value of the business. The Ninth Circuit reversed the Tax Court decision by concluding that the Tax Court erred when it failed to value the estate's minority stockholding by reference to two sales of minority blocks occurring shortly after the valuation date.	2-78
Kaufman, Estate of, v. Comm'r (II)	03/15/01	United States Court of Appeals	9th Circuit Federal	Noonan		2-142

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Keller v. United States	09/30/05	United States District Court	Southern District of Texas	Rainey	The District Court denied the government's motion for summary judgment on the issue of the applicability of sec. 2036 to look through a FLP.	2-282
Kelley, Estate of, v. Comm'r	10/11/05	United States Tax Court	Specialty Federal	Vasquez	The Tax Court determined the appropriate lack of marketability and minority interest discounts to apply to an interest in a family limited liability partnership holding cash and certificates of deposit.	2-284
Kerr v. Comm'r (I)	12/23/99	United States Tax Court	Specialty Federal	Jacobs	The Tax Court determined that the restrictions in FLP agreements could not be removed by family partners. The Court of Appeals affirmed that discounts were appropriate.	2-99
Kerr v. Comm'r (II)	06/10/02	United States Court of Appeals	5th Circuit Federal	Duhe		2-199
Kimbell v. Comm'r (I)	01/15/03	United States Tax Court	Specialty Federal	Buchmeyer	The Tax Court accepted the IRS's argument that the transaction was not a bona fide sale for full and adequate consideration because the parties were related. The Court of Appeals vacated this holding and remanded the case to determine whether decedent's interest was that of an assignee or limited partner.	2-217
Kimbell v. Comm'r (II)	05/20/04	United States Court of Appeals	5th Circuit Federal	Davis		2-254
Klauss, Estate of, v. Comm'r	06/27/00	United States Tax Court	Specialty Federal	Colvin	The Tax Court rejected a valuation that used the CAPM and a build-up model that included a small-stock premium.	2-116
Knight v. Comm'r	11/30/00	United States Tax Court	Specialty Federal	Colvin	The Tax Court rejected taxpayer's expert because his testimony was not objective.	2-131

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Koblick v. Comm'r	04/03/06	United States Tax Court	Specialty Federal	Goeke	The Tax Court determined the fair market value of a minority interest in a company was donated to a charitable organization, as part of a plan by all shareholders of the company to donate all the stock to the nonprofit organization.	2-300
Kohler v. Comm'r	07/25/06	United States Tax Court	Specialty Federal	Kroupa	A "textbook case" on how to value a large, closely-held corporation, complete with discussion of dividend method and appropriate discounts.	2-310
Kohlsaat, Estate of, v. Comm'r	05/07/97	United States Tax Court	Specialty Federal	Swift	The Tax Court ruled that the transfer of property qualified for 16 annual gift tax exclusions.	2-35
Korby, Estate of, v. Comm'r (I)	05/10/05	United States Tax Court	Specialty Federal	Goeke	The Tax Court determined the value of assets contributed to a FLP was includable in the decedent's gross estate. Court of Appeals confirmed, noting that the IRS had always maintained that they both retained an interest in the FLP assets.	2-273
Korby, Estate of, v. Comm'r (II)	12/08/06	United States Court of Appeals	8th Circuit Federal	Bye		2-322
Kosman v. Comm'r	03/11/96	United States Tax Court	Specialty Federal	Colvin	The Tax Court was forced to reach a conclusion based on weak evidence.	2-15
Krapf v. United States	03/19/96	United States Court of Federal Claims	Federal Claims	Smith	The Court of Federal Claims determined that the transactions were relevant only when (1) there had been no material change in the company between the valuation date and the transaction date, or (2) if the subsequent information was foreseeable on the valuation date.	2-17

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Langer v. Comm'r	10/30/06	United States Tax Court	Specialty Federal	Haines	The Tax Court provided insight on the appropriate valuation date and five factors in considering relevant sales comparables.	2-320
Lappo v. Comm'r	09/03/03	United States Tax Court	Specialty Federal	Thorn-ton	The Tax Court relied primarily on the Bajaj private placement study in arriving at its conclusion regarding the marketability discount, while looking at closed end fund data for its minority interest discount.	2-237
Lehmann, Estate of, v. Comm'r	08/26/97	United States Tax Court	Specialty Federal	Ham-bleen	The Tax Court determined that the IRS expert lacked supporting evidence in his analysis.	2-39
Leichter, Estate of, v. Comm'r	03/06/03	United States Tax Court	Specialty Federal	Gerber	The Tax Court found flaws including the application of seemingly duplicitous discounts, brevity and conclusory nature of the report, and the use of companies in the market approach that were not comparable.	2-221
Lockett, Estate of, v. Comm'r	02/09/98	United States Tax Court	Specialty Federal	N/A	The Tax Court denied the estate a charitable deduction for property with historic significance held in trust, because the decedent did not possess a charitable intent to transfer the property on the date of her death.	2-46
Lundquist v. United States	02/23/99	United States District Court	Eastern Dis-trict of New York	Kahn	The District Court found that sec. 483 characterizes a payment as principal or interest without affecting the valuation of the gift.	2-72

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Maggos, Estate of, v. Comm'r (I)	09/23/97	United States Tax Court	Specialty Federal	Laro	The Tax Court rejected taxpayer's motion for summary judgment on gift tax liability resulting from a redemption of a majority interest in a corporation's stock. After recalculating both experts' valuations, the Tax Court found that the valuation resulted in the same fair market value.	2-40
Maggos, Estate of, v. Comm'r (II)	04/11/00	United States Tax Court	Specialty Federal	Ruwe		2-114
Magnin, Estate of, v. Comm'r (I)	01/24/96	United States Tax Court	Specialty Federal	Ruwe	The Tax Court clarified the definition of 'Fair Market Value' when it warned that the hypothetical sale should not be separated from the actual facts that would affect the value of the subject company's stock. The Court of Appeals reversed the Tax Court and determined that 'adequate and full consideration' under IRC Sec. 2036 for the transfer of a remainder interest is the actuarial value of the remainder interest. The Tax Court rejected the estate's expert because he used the wrong standard of value and found fault with the IRS's expert because the companies used in the market approach were not comparable to the subject company.	2-11
Magnin, Estate of, v. Comm'r (II)	07/13/99	United States Court of Appeals	9th Circuit Federal	Schroeder		2-88
Magnin, Estate of, v. Comm'r (III)	02/12/01	United States Tax Court	Specialty Federal	Ruwe		2-138
Mandelbaum v. Comm'r	06/12/95	United States Tax Court	Specialty Federal	Laro	The Tax Court listed nine non-exclusive factors to be considered when determining the size of a discount for lack of marketability or illiquidity.	2-6

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Manship, Estate of, v. United States	04/13/06	United States District Court	Eastern District of Louisiana	Noland	The District Court determined that documents produced by an appraiser were not covered by the work product or attorney-client privilege because any claim to the privileges had been waived.	2-301
Marmaduke, Estate of, v. Comm'r	10/14/99	United States Tax Court	Specialty Federal	Swift	The Court Tax concluded that the illiquidity discount should be greater than that indicated in the ESOP appraisal because the block of stock was fourteen times larger than the largest block of stock redeemed by the ESOP.	2-96
McClatchy, Estate of, v. Comm'r (I)	04/03/96	United States Tax Court	Specialty Federal	Nims	The Tax Court ruled that unregistered and restricted Class B stock in a publicly-held corporation should be valued without the limitations imposed on it under SEC Rule 144.	2-20
McClatchy, Estate of, v. Comm'r (II)	06/26/98	United States Court of Appeals	9th Circuit Federal	Tashima	The Ninth Circuit reversed the Tax Court's decision denying the estate a discount for SEC Rule 144 restrictions.	2-58
McCord v. Comm'r (I)	05/14/03	United States Tax Court	Specialty Federal	Vasquez	The Tax Court rejected pre-IPO studies and restricted stock analyses, but also concluded that appropriate discounts could not be inferred entirely from illiquidity costs from private placements.	2-223
McCord v. Comm'r (II)	08/22/06	United States Court of Appeals	5th Circuit Federal	Weiner	The Court of Appeals reversed the Tax Court's valuation of gifts because the lower court relied on a post-valuation date event in computing value.	2-315

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McCor-mick, Estate of, v. Comm'r	08/07/95	United States Tax Court	Specialty Federal	Gerber	The Tax Court valued interests in a real estate partnership and accepted a valuation using the asset approach, plus various discounts.	2-7
McFarland, Estate of, v. Comm'r	09/19/96	United States Tax Court	Specialty Federal	Laro	The Tax Court rejects motion to value partnership only on going concern premise.	2-27
McLendon, Estate of, v. Comm'r (I)	12/28/95	United States Court of Appeals	5th Circuit Federal	Jones	The Court of Appeals concluded that the Tax Court erred when it valued interests in a partnership as partnership interests rather than assignee interests. The Fifth Circuit reversed and rendered a decision for the estate on its use of the annuity tables pursuant to Rev. Rul. 80-80 when determining the amount of the annuity.	2-10
McLendon, Estate of, v. Comm'r (II)	03/09/98	United States Court of Appeals	5th Circuit Federal	Jolly		2-48
McMorris, Estate of, v. Comm'r	03/20/01	United States Court of Appeals	10th Circuit Federal	Briscoe	The Court of Appeals ruled that claims against an estate, being deductible under IRC Sec. 2053 (a)(3), should be valued as of the date of death.	2-143
Mellinger, Estate of, v. Comm'r	01/26/99	United States Tax Court	Specialty Federal	Cohen	The Tax Court declined to aggregate publicly traded stock includible in the decedent's gross estate under IRC sec. 2044 and 2033.	2-68
Melton, Estate of, v. United States	12/04/95	United States District Court	Western District of Texas	Primomo	In deciding to apply the minority discount, the magistrate determined that a shareholder with a 50% of the stock can block action by other shareholders but is unable to control the corporation.	2-9

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Mirowski v. Comm'r	03/26/08	United States Tax Court	Specialty Federal	Chiechi	The Tax Court found Section 2036(a) not to be applicable due to availability of the "bona fide sale" exception.	2-345
Mitchell, Estate of, v. Comm'r (I)	10/09/97	United States Tax Court	Specialty Federal	Jacobs	The Tax Court applies discounts for key person and pending litigation. The Court of Appeals reversed the Tax Court's decision and remanded it for the Tax Court to shift the burden of proof to the Commissioner and to provide sufficient explanation on how they reached their valuation conclusion. In calculating the appropriate minority discount, the Tax Court increased the discount size by 6% for increased the lack of marketability inherent in a minority block of stock, but declined to add a marketability discount.	2-41
Mitchell, Estate of, v. Comm'r (II)	05/02/01	United States Court of Appeals	9th Circuit Federal	Wardlaw		2-147
Mitchell, Estate of, v. Comm'r (III)	04/09/02	United States Tax Court	Specialty Federal	Jacobs		2-192
Mueller, Estate of, v. Comm'r	11/05/96	United States Tax Court	Specialty Federal	Ruwe	The Tax Court rejected the estate's claim for equitable recoupment of taxes paid based on a valuation of the estate's stock.	2-29
Negron v. United States	06/04/07	United States District Court	Northern District of Ohio	Aldrich	In this case involving a lottery winner, the District Court found that the annuity tables produced an unrealistic and unreasonable result in valuing the annuity.	2-330

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Noble, Estate of, v. Comm'r	01/06/05	United States Tax Court	Specialty Federal	Laro	The Tax Court valued the interest at its post-death sale price, adjusted for 3% inflation, stating that there had not been any material change in circumstances between decedent's death and the date the shares were sold after decedent's death.	2-267
Nowell, Estate of, v. Comm'r	01/26/99	United States Tax Court	Specialty Federal	Cohen	The Tax Court concluded that that estate should not aggregate the limited partnership units in which the decedent had a right to receive income for life with partnership units the decedent placed in trust.	2-69
O'Neal, Estate of, v. United States (I)	07/26/01	United States Court of Appeals	11th Circuit Federal	Hill	The Court of Appeals determined that a claim against an estate, which is deductible under IRC sec. 2053(a), should be valued on the date of death. The District Court, on remand from the Court of Appeals, considered the date-of-death value of claims made against the decedent's estate as a result of transferee gift tax and generation-skipping transfer tax liabilities.	2-165
O'Neal, Estate of, v. United States (II)	07/31/02	United States District Court	Northern District of Alabama	Johnson		2-204

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Okerlund v. United States (I)	08/23/02	United States Court of Federal Claims	Specialty Federal	Wilson	Both experts used the public guideline company and discounted cash flow method to value the minority blocks of stock. The Court of Appeals determined that the use of post-valuation date information may be considered when valuing a company on the valuation date, but only to the extent that profile of the company on the valuation date and on the ex post date are similar.	2-209
Okerlund v. United States (II)	04/09/04	United States Court of Appeals	Federal	Gakarsa		2-250
Peracchio v. Comm'r	09/25/03	United States Tax Court	Specialty Federal	Halpern	The Tax Court was displeased with both experts' analyses, criticizing one for relying on past cases to determine the discount and the other for relying on overall average discounts from the studies.	2-239
Polack v. Comm'r (I)	06/10/02	United States Tax Court	Specialty Federal	Marvel	The Tax Court determined that the IRS correctly relied on the testimony of an unrelated shareholder in making its income projections and in its treatment of the corporate assets. The Court of Appeals affirmed the Tax Court's decision not to consider the post-valuation date operations of the company in determining the value of closely held stock on the earlier valuation date.	2-200
Polack v. Comm'r (II)	05/03/04	United States Court of Appeals	8th Circuit Federal	Loken		2-251
Rabenhorst v. Comm'r	02/29/96	United States Tax Court	Specialty Federal	Wright	The Tax Court considered a pre-valuation date redemption and an appraisal performed using the public company guideline method.	2-14

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Rakow v. Comm'r	05/27/99	United States Tax Court	Specialty Federal	Gale	The Tax Court accepted the valuation using the discounted future cash flow method over objections by the IRS and applied a minority interest discount.	2-84
Rauenhorst v. Comm'r	10/07/02	United States Tax Court	Specialty Federal	Ruwe	The Tax Court considered whether the anticipatory assignment of income doctrine should be applied to recharacterize the transfer of warrants to four charitable organizations.	2-213
Rector v. Comm'r	12/13/07	Court of Appeals	United States	Laro	The Tax Court adopted a "step transaction" approach, finding that decedent's transfer of assets to the FLP and her subsequent gifts of the limited partner interests were part of a "single plan" to minimize her Federal estate tax without entailing a significant nontax business purpose or a genuine pooling of assets.	2-340
Reichardt, Estate of, v. Comm'r	03/01/00	United States Tax Court	Specialty Federal	Colvin	The Tax Court determined that the estate must include the value of partial interests in real property in its gross estate under IRC sec. 2036.	2-111
Renier, Estate of, v. Comm'r	09/25/00	United States Tax Court	Specialty Federal	Gale	The Tax Court valued the business using the capitalization of equity method and rejected the IRS' capitalization rate which was computed using WACC.	2-127

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Robertson v. United States	01/13/06	United States District Court	Northern District of Texas	Kaplan	Court favors reliance on academic research and empirical data as opposed to purely subjective factors (vulnerable to adjustment) to affirm IRS discount.	2-295
Rodgers, Estate of, v. Comm'r	04/20/99	United States Tax Court	Specialty Federal	Chiechi	The Tax Court calculated the value of a real estate operating company's properties and included an absorption discount.	2-81
Rosen, Estate of, v. Comm'r	06/01/06	United States Tax Court	Specialty Federal	Laro	The U.S. Tax Court applied a multifactor analysis to determine whether the objective facts indicated whether an FLP had a legitimate and substantial nontax purpose.	2-306
Scanlan, Estate of, v. Comm'r	07/24/96	United States Tax Court	Specialty Federal	Laro	IRS expert applied only a 4% discount to redemption sale price to account for minority status and other factors.	2-25
Schauerhamer, Estate of, v. Comm'r	05/28/97	United States Tax Court	Specialty Federal	Foley	The Tax Court concluded that three FLPs should be disregarded, and the value of their assets included in the value of the decedent's gross estate under IRC sec. 2036.	2-37
Schott v. Comm'r (I)	05/09/01	United States Tax Court	Specialty Federal	Cohen	The Tax Court concluded that grantor retained annuity trusts (GRATs) from the plaintiffs should be valued as single life annuities rather than dual life annuities.	2-152
Schott v. Comm'r (II)	02/18/03	United States Court of Appeals	9th Circuit Federal	Noonan	The Court of Appeals reversed the Tax Court and concluded that GRATs established for the life of the grantor and the life of the grantor's spouse could be valued as a dual-life annuity under sec. 7520.	2-219

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Schusterman v. United States	08/22/95	United States Court of Appeals	10th Circuit Federal	Baldock	The Court of Appeals determined that the safe harbor interest rates of IRC sec. 483 were inapplicable for purposes of valuing a note for the gift	2-8
Schutt, Estate of, v. Comm'r	05/26/05	United States Tax Court	Specialty Federal	Wherry	The Tax Court rejected all the experts, finding that they made assumptions regarding the companies without explaining their base for those assumptions.	2-275
Schwan, Estate of, v. Comm'r	07/13/01	United States Tax Court	Specialty Federal	Nims	The Tax Court determined that a redemption agreement had no impact on the underlying assets' value prior to death and therefore was a testamentary device to be disregarded.	2-163
Senda v. Comm'r (I)	07/12/04	United States Tax Court	Specialty Federal	Cohen	The Tax Court determined that the limited partnership form should be disregarded for gift tax purposes when the contribution of property occurred on the same day as gifts of limited partnership units from the contributor to his children and where the partnership formalities were not respected by the contributor/general partner.	2-257
Senda v. Comm'r (II)	01/06/06	United States Court of Appeals	8th Circuit Federal	Benton, Jr.	The Court of Appeals determined that a transfer of publicly stock to a FLP made close in time to a gift of FLP interests was an indirect gift of the pro rata share of the public stock for gift tax purposes where the petitioner could not conclusively show that which event occurred first.	2-294

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Shackl-eford v. United States (I)	07/29/98	United States District Court	Eastern District of California	Karlton	The District Court considered whether unreceived lottery payments should be valued as a commercial annuity or as a private annuity, including deviations from the annuity tables for lack of marketability.	2-61
Shackl-eford v. United States (II)	08/28/01	United States Court of Appeals	9th Circuit Federal	Thomas		2-168
Shepherd v. Comm'r (I)	10/26/00	United States Tax Court	Specialty Federal	Thornton	The Tax Court held transfers to FLP were indirect gifts of real estate. The Court of Appeals affirmed the Tax Court's characterization of transfer of real property to an existing partnership as an indirect gift to the other partners which enhanced the value of their interests.	2-130
Shepherd v. Comm'r (II)	02/28/02	United States Court of Appeals	11th Circuit Federal	Hull		2-186
Simplot, Estate of, v. Comm'r (I)	03/22/99	United States Tax Court	Specialty Federal	Jacobs	In this complex case, the Tax Court valued a large, closely held, agri-business company using, in part, a discounted cash flow method and another market approach. The Ninth Circuit reversed the Tax Court's ruling and ordered entry of judgment in favor of the estate on remand because "the Tax Court erroneously attributed a premium to minority voting stock."	2-76
Simplot, Estate of, v. Comm'r (II)	05/14/01	United States Court of Appeals	9th Circuit Federal	Noonan		2-153
Smith (Estate of Crosby) v. United States	02/14/96	United States District Court	Mississippi	Russell	The District Court accepted the larger yield of a promissory note based on testimony for the estate's expert who considered factors including lack of marketability and lack of indenture/covenant.	2-12

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Smith, Estate of Helen J., v. Comm'r	11/05/99	United States Tax Court	Specialty Federal	Gale	Tax Court accepted taxpayer's expert who relied on Management Planning, Inc. study.	2-98
Smith, John David v. United States	11/15/04	United States Court of Appeals	5th Circuit Federal	King	The Court of Appeals concluded that retirement accounts should not be discounted for potential future income taxes.	2-262
Smith, Sidney E. Jr., v. United States (I)	06/30/04	United States District Court	Western District of Pennsylvania	Baxter	A magistrate for the District Court determined on summary judgment that Sec. 2703(a) applied to disregard restrictions on the transfer of FLP interest contained in the FLP agreement.	2-256
Smith, Sidney E. Jr., v. United States (II)	07/22/05	United States District Court	Western District of Pennsylvania	Baxter		2-281
Snyder, Estate of, v. United States	08/20/99	United States Court of Federal Claims	Federal Claims	Turner	The Court of Federal Claims permitted the estate to deduct an environmental liability settlement over the objection of the IRS.	2-92
Speer v. Comm'r	07/16/96	United States Tax Court	Specialty Federal	Ruwe	The IRS argued that the payments should be taxed as a constructive dividend and as a gift, while the petitioners stated that the agreement was at arm's length and on fair and reasonable terms.	2-22
Stinson, Estate of, v. United States (I)	10/02/98	United States District Court	Northern District of Indiana	Miller, Jr.	The District Court found that forgiveness of corporate debt was not a gift of a present interest to the corporation's shareholder, and, therefore, the annual gift tax exclusion could not be claimed by the donor. The Seventh Circuit affirmed the District Court's finding.	2-65
Stinson, Estate of, v. United States (II)	05/26/00	United States Court of Appeals	7th Circuit Federal	Evans		2-115

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Stone v. United States (I)	05/25/07	United States District Court	Northern District of California	Henderson	The District Court determined whether an undivided minority interest in a collection of paintings should be valued inclusive of a fractional interest discount. Having failed to receive persuasive evidence, the Court permitted the estate to take a 5% discount for its 50% interest in the art collection.	2-328
Stone v. United States (II)	08/10/07	United States District Court	Northern District of California	Henderson		2-332
Stone, Estate of, v. Comm'r	11/07/03	United States Tax Court	Specialty Federal	Chiechi	The Tax Court determined that the value of property transferred to five FLPs should not be included in the decedent's gross estate under sec. 2036(a)(1) because the decedent received FLP interest proportionate to the fair market value of the assets he transferred.	2-241
Strangi, Estate of, v. Comm'r (I)	11/30/00	United States Tax Court	Specialty Federal	Cohen	A divided Tax Court rejected the IRS's attempts to recapture the value of assets transferred to a FLP for transfer tax purposes. The Court of Appeals remanded the Tax Court's finding that the IRS's claim that the FLP's assets should be included in the decedent's estate under sec. 2306 (a), but affirmed the Tax Court on all other issues. On remand, the Tax Court found that section 2306 applied because there was no arm's-length transfer, and there was a mere "recycling" of value. Fifth Circuit affirmed the Tax Court's decision on remand.	2-133
Strangi, Estate of, v. Comm'r (II)	06/17/02	United States Court of Appeals	5th Circuit Federal	Clement		2-204
Strangi, Estate of, v. Comm'r (III)	05/20/03	United States Tax Court	Specialty Federal	Cohen		2-226
Strangi, Estate of, v. Comm'r (IV)	07/15/05	United States Court of Appeals	5th Circuit Federal	Jolly		2-280

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Temple v. United States	03/10/06	United States District Court	Eastern District of Texas, Lufkin Division	Heartfield	The District Court rejected a marketability discount computed using the QMDM because the expert failed to adequately explain her assumption with respect to the required holding period input.	2-298
Thompson, Betty W. v. Comm'r	10/17/96	United States Tax Court	Specialty Federal	Dean	The court denied the petition for cost recovery on the basis that the taxpayer failed to show she had paid or incurred any fee or cost.	2-28
Thompson, Estate of Josephine, v. Comm'r (I)	07/26/04	United States Tax Court	Specialty Federal	Swift	The Tax Court disagreed with the estate's valuation of a 20% interest in a century-old, closely held company and labeled the experts as inexperienced and revalued the company itself. The Second Circuit affirmed the Tax Court's valuation, but added \$68 million in non-operating assets to the company's capitalized income.	2-258
Thompson, Estate of Josephine, v. Comm'r (II)	08/23/07	Court of Appeals	United States	Jacobs		2-333
Thompson, Estate of Theodore, v. Comm'r (I)	09/26/02	United States Tax Court	Specialty Federal	Jacobs	The Tax Court determined that the value of the assets the decedent transferred to two FLPs were includable in the gross estate under IRC sec. 2036 (a). The Court of Appeals for the Third Circuit affirmed.	2-211
Thompson, Estate of Theodore, v. Comm'r (II)	09/01/04	United States Court of Appeals	3rd Circuit Federal	Scirica		2-261
Trenchard, Estate of, v. Comm'r	05/30/95	United States Tax Court	Specialty Federal	Laro	The Tax Court valued the gift as the difference between the value of the contributed property and the value of the preferred stock received.	2-5

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Trompeter, Estate of, v. Comm'r (I)	01/27/98	United States Tax Court	Specialty Federal	Laro	The Tax Court concluded that the redemption of the decedent's preferred stock did not fix the value for estate tax purposes because it was too far removed from the valuation date; however, it was relevant to the determination of value on the valuation date. The Ninth Circuit reversed the Tax Court's valuation of closely held, preferred stock, but affirmed the Tax Court's finding that the stock would be redeemed pursuant to its terms. The Tax Court, on remand from the Ninth Circuit, reconsidered and explained its present value methodology and discount rate applied when determining the fair market value of preferred stock.	2-46
Trompeter, Estate of, v. Comm'r (II)	01/30/02	United States Court of Appeals	9th Circuit Federal	McKeown		2-182
Trompeter, Estate of, v. Comm'r (III)	02/04/04	United States Tax Court	Specialty Federal	Laro		2-247
Trotter, Estate of, v. Comm'r	09/21/01	United States Tax Court	Specialty Federal	Nims	The Tax Court, agreeing with the IRS, included the value of a condominium in the gross estate under IRC sec. 2036(a).	2-173
True, Estate of, v. Comm'r (I)	07/06/01	United States Tax Court	Specialty Federal	Beghe	The Tax Court concluded the buy-sell agreements were not controlling because they failed the fourth prong of the Lauder test—the agreements amounted to a testamentary device. The Court of Appeals affirmed the Tax Court's decision.	2-157
True, Estate of, v. Comm'r (II)	12/02/04	United States Court of Appeals	10th Circuit Federal	Seymour		2-264

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Van Zelst v. Comm'r	11/15/96	United States Court of Appeals	7th Circuit Federal	Easter-brok	The Court of Appeals rejected the donor's charitable deduction for the value of property and mineral rights in Alaska.	2-30
Vinikoor v. Comm'r	04/27/98	United States Tax Court	Specialty Federal	N/A	The Tax Court determined that a transfer of stock was a gift rather than a loan even though the parties executed a note.	2-51
Wall v. Comm'r	03/27/01	United States Tax Court	Specialty Federal	Beghe	The Tax Court criticized both experts on other aspects of their opinions, and adopts the IRS notice of deficiency value.	2-145
Weinberg, Estate of, v. Comm'r	02/15/00	United States Tax Court	Specialty Federal	Whalen	The Tax Court criticized taxpayer's expert's use of a single comparable and IRS expert's use of QMDM.	2-109
Welch, Estate of, v. Comm'r (I)	05/06/98	United States Tax Court	Specialty Federal	Laro	The Tax Court disallowed a discount for built-in capital gains taxes on appreciated real property, which was under the threat of condemnation on the valuation date. The Court of Appeals reversed the Tax Court decision by ruling that-	2-54
Welch, Estate of, v. Comm'r (II)	03/01/00	United States Court of Appeals	6th Circuit Federal	Holschuh	that the availability of a section 1033 election does not prohibit the application of a capital gains tax deduction, but is a factor to be considered under the willing buyer-willing seller standard.	2-112
Williams, Estate of, v. Comm'r	02/12/98	United States Tax Court	Specialty Federal	Colvin	The Tax Court determined the per-acre value of fee ownership of undeveloped timberland and farmland.	2-47

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Wright, Estate of, v. Comm'r	01/29/97	United States Tax Court	Specialty Federal	Swift	The Tax Court valued the largest minority block of a bank holding company and considered the fact that the stock was thinly-traded OTC and had a waiting list of investors.	2-31
Young, Estate of, v. Comm'r	05/11/98	United States Tax Court	Specialty Federal	Wright	The Tax Court denied an estate a fractional interest discount on property the decedent and his wife, both resident aliens, owned as joint tenants with the right of survivorship.	2-55