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In its October 11, 2005 decision [*Estate of Webster E. Kelley et. al. v. Commissioner, T.C. Memo 2005-235*] the Court did its own valuation by correcting both experts. This is an estate case dealing with a partnership invested in cash and certificates of deposit and an LLC owning a percentage of the partnership.

	Estate	IRS	Court
Lack-of-control discount:	25.0%	12%	12%
Lack-of-Marketability discount:	38%	14%	23%
Together, from NAV:	53.5%	24.3%	32.2%

Closed-end fund discounts from net asset value provided the basis for calculating the Lack-of-Control discount. The estate's appraiser used the last quartile of the funds, arguing that - ranked by their observed discounts from net asset value - those with the highest discounts are the most comparable to the subject. The Court disagreed, choosing instead to use all the closed-end fund since the reasons for each fund's discount are varied, and are more likely to include those relevant to the case at hand than just to the ones with the highest discounts. The Court is right because using large samples is always more reasonable when only few variables are known.

By focusing on the assets owned by the various closed-end funds, one could probably have concluded to a lower discount than the one picked by the Court, so its conclusion is generous for the taxpayer.

The Lack-of-Marketability Discount was determined by the Court based on previous cases [appraisers can not do that, but the Court can,] including two recent FLP gift tax cases with other types of underlying assets: *McCord* [120 TC 13 filed 5/14/03 involving securities and other assets] and *Lappo* [T.C. Memo 2003-258 involving securities and real estate.] Frankly, I would have preferred to see the appraisers and the Court gauge the investment risk of the partnership and peg the discount at the level necessary to make the resulting return consistent with the risk. Further, I wonder why the Court still finds it distasteful to use a quantitative model such as the Mercer model, which does explain why limited market assets are sold at a discount.

However, the Court's overall decision turned out to be reasonable to the taxpayer even if the parties' arguments or even part of the Court's reasoning was not.

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