

T&E - Tax Alert February 3, 2009

Litchfield v. Commissioner of Internal Revenue, T.C. memo 2009-21 filed January 29, 2009

The estate owned a 43.1% interests in LRC, a C corporation holding real estate and securities which, 9 months before the date of death, became an S corporation. Thus pre-election assets, if sold within 10 years of the election, remain subject to double taxation. It also held a 22.9% interest in LSC, a C corporation holding marketable securities. Both corporations had been in existence since the twenties. Accordingly, the issues were the determination of the appropriate Built-In Gains Discount ["BIGD",] the discount for lack of control ["LOCD",] and the lack-of-marketability discount ["LOMD".]

	as per Estate Return	as per IRS	as per Tax Court
LRC Net Asset Value [43.1% owned]	\$33.2 million	same	same
BIGD	17.4 %	2.0%	17.4%
LOCD	14.8 %	10.0 %	14.8 %
LOMD	36.0 %	18.0 %	25.0 %
Resulting Value	\$6.5 million	\$10.1 million	\$7.5 million
LSC NAV [22.9 % owned]	\$52.8 million	same	same
BIGD	23.6 %	8.0 %	23.6 %
LOCD	11.9 %	5.0%	11.9 %
LOMD	29.7%	10.0 %	20.0 %
Resulting Value	\$5.7 million	\$9.6 million	\$6.5 million

The Court agreed with the estate's expert on all discounts but the LOMD. He had used 5-8 year asset turnovers based on history, i.e. no 100% BIG discount was requested here. He further fitted the data of closed-end funds and restricted stocks to the facts of LRC and LSC and took into account historical growth rates during holding periods. In a footnote, the Court declared itself satisfied with the expert's calculation, but did not comment on any adjustment for the S status of LRC. The Service's expert, on the other hand, used considerably less realistic assumptions and did not consult with management. The Court decided on LOMDs based on the conclusion of the expert for the estate in an earlier gift tax case involving the same LSC interest.

The decision is at <http://www.ustaxcourt.gov>. Click on Opinions Search, fill-in "Litchfield" under Case Name Keyword and click Search. Then click on Estate of Marjorie deGreef Litchfield. A copy has been placed on my practice's website at <http://www.NYNJCT-BV.com/Litchfield.TCM.WPD.pdf> Please do not hesitate to call or e-mail to discuss this or any other valuation issue.

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