

## T&E Alert

Succession of Charles McCord v. Commissioner U.S. Courts of Appeals Fifth Circuit decision filed August 22, 2006 No. 03-60700

On May 14, 2003, the U.S. Tax Court issued a gift tax decision for the Commissioner largely rejecting the use of pre-IPO and restricted stock studies in determining lack-of-marketability discounts ["LOMD"] involving a family limited partnership invested in equities, bonds, real estate and oil and gas interests. The 2003 opinion also criticized both the assignment and subsequent confirmation agreements, but no valuation issue was involved here. The decision was however a win for the taxpayers with respect to the charitable deduction involved in this complex transaction.

The tax court matter was originally decided by one judge finding for the taxpayers on the valuation issues, but then a majority - split, as it turned out - then ruled principally for the Commissioner. The majority used a confirmation agreement entered into post-gift date to support its opinion. The taxpayers's appraiser had documented an overall discount from net asset value of 49.3%, versus a discount of 14.8% advocated by the Commissioner and the tax court's majority decision of approx. 32%.

The appeals decision criticized that unusual procedure, and reversed and remanded for the taxpayers. In doing so, it did not rule on valuation issues, except to validate long-established methods which the tax court majority had ignored. The appeals court was most critical of the tax court majority's change of burden of proof rules to - apparently - suit its gut reaction to the matter.

The appeals decision is available at <http://www.ca5.uscourts.gov/opinions/pub/03/03-60700-CV0.wpd.pdf> or at <http://www.NYNJCT-BV.com/03-60700-CV0.wpd.pdf>

Do not hesitate to call or e-mail to discuss this or any other valuation issue.

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August 31, 2006

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