

T & E Alert

Leonard A. Robertson, as Trustee of the David M. & Mary C. Crowley Charitable Lead Non-Exempt Trust f/b/o Donald Carter Jr. Plaintiff v. United States of America Defendant.

Civil Action No.3-03-CV-2113-BD, consolidated with 3-03-CV-2114-L, 3-03-CV-2115-R, and 3-03-CV-2116-L United States District Court for the Northern District of Texas, Dallas division. Decided January 13, 2006. 2006. US Dist. Lexis 1167. Jeff Kaplan, U.S. Magistrate Judge.

The Court quite summarily rejected the government's contention that no discount was warranted and that net asset value should be used "because that theory was disavowed by all of the testimony of experts in determining their valuations in this case."

The valuation of partnership units turned on the reports of 2 experts. The Court accepted the conclusion of the taxpayers' expert with respect to the lack-of-control discount ["LOC,"] and that of the Service's expert with respect to the lack-of-marketability discount ["LOMD."] The testimony of another expert for the Service was rejected out of hand as being "difficult to follow."

The tax payer's expert report was called more thorough in comparing the partnership with closed-end funds; it used medians which the Court called more reflective of market factors than averages. The Court accepted his 8% basic LOC discount. The expert then reviewed factors which made investments in closed-end funds different from real estate partnerships and identified another 22% in discounts. He then estimated that half, or 11%, were attributable to control factors. The Court, noting that the IRS expert did not perform such analysis and did not offer any argument for rebuttal, accepted the 19% LOC calculation. The Court also rejected an additional 3% discount based on factors deemed previously considered.

Both experts analyzed restricted-stock studies to support the Lack-of-Marketability Discount or LOMD. The IRS expert relied on academic research to support 12.5%, while the taxpayer's expert suggested 25% empirically. The Court criticized the value of restricted-stock studies in view of "the downward trend in discounts since 1990 due to the removal of restrictions." The Court, however, picked the former as more credible.

The Court, accordingly, allowed a combined discount of 29.125%, compared with the Service's revised 17.925% and the tax payer's 41.5%. Keep it simple and believable by reference to the markets !

The decision does not appear to be available at the Court's web site. A copy is available at [http://www.NYNJCT-BV.com/Robertson v US.pdf](http://www.NYNJCT-BV.com/Robertson_v_US.pdf)

J.L. PIERSON, ASA

Business Valuation

<mailto:jlpierson@nynjct-bv.com>

<http://www.nynjct-bv.com>

(203) 325-2703 Office

P.O. Box 2392 Darien CT 06820-0392

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