**T&E Alert**

Temple v. United States Civil Action No. 9:03-CV-165 [TH] in the U.S. District Court for the Eastern District Court of Texas, Lufkin division filed March 10, 2006.

At issue was the fair market value, as of several gift dates, of interests in various entities holding a ranch, a winery and large blocs of marketable securities. The Mercer Quantifying the Lack-of-Marketability Discount ["QMD"] model did not fair well, and neither did the old saw about using the Mergerstat data to prove just about anything.

QMD assumes an investment horizon, a required rate of return, an interim return, and growth rates in both the investment and its dividend. While the Court did not approve of the appraiser's assumptions - which appeared somewhat at odds with the facts - it also remarked that the discount would grow with the time horizon, which is certainly true if the cash return is much lower than the required rate of return. In the writer's opinion, this does not make the QMD wrong, even if the appraiser could have applied the model in a more case specific manner. Strike another blow for the judiciary 's understanding of QMD, an otherwise perfectly valid tool.

The Court did not think much of one of the taxpayer's expert, who assumed that the lack-of-control discount would be the inverse of the control premium observed in the publicly-owned, entire company market, as reflected by the Mergerstat database. It is difficult to conclude that Merger & Acquisition control premia in the public arena have anything to do with investments in private holding vehicles.

The Service asked that the discount with respect to the gift of a 76% LLC interest in the winery be eliminated. The Court did not agree, after an analysis of the California LLC statutes applied to the winery. Instead, the Court was persuaded by data from a real estate appraiser and approved 60%, i.e. more than the tax payer requested.

On the other hand, a number of approaches now widely used by appraisers, from the closed-end funds analysis to the analysis of Partnership Profiles data, were validated by the Court. Minority interests in the ranch and the winery were discounted at 38%; the majority interest in the winery at 60%, and minority interests in the entities holding traded stock at 19.1%, 21.3 and 15.4%. In the end, the taxpayer won himself a sizeable and perfectly reasonable refund from the Service. The decision can be read/downloaded at http://www.NYNJCT-BV.COM/Temple_v_US.pdf.

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