

*Summer, 2019*

**Kress v. United States** [Eastern U.S. District Court of Wisconsin March 26, 2019]

Sub-Chapter S corporate valuation has been largely defined by several tax court decisions: Gross v. Commissioner [TCM 1999-254;] Wall v. Comm'r [TCM 2001-75;] Estate of Heck v. Comm'r [TCM 2002-34;] Estate of Adams v. Comm'r [TCM 2002-80;] Dallas v. Comm'r [TCM 2006-212;] Estate of Giustina v. Comm'r [TCM 2011-141; Estate of Gallagher [TCM 2011-148.]

In response to these cases, the business valuation community has developed models to comply with the tax court's requirement and in particular reflecting that an S corporation is generally worth more than a C corporation because of its tax benefits.

Now a recent district court decision contradicts them all by accepting the tax-affecting, at regular corporate rates, of S corporation earnings. The government expert added a premium to account for the benefits of the S corporation status, but the Court "remained neutral on the issue" even though minority owners can not change the corporate tax status. The government has not, to date, appealed and the decision thus stands as precedent only in this particular district. It would appear possible, however, that other judges could find the Court's reasoning persuasive, particularly as it places less emphasis on calculations as the above tax court memoranda and more on reasoning and the ability to synthesize information.

The subject entity was a large private company, and at issue was the valuation, over several years, of gifted minority stakes. The Court was impressed by the fact that the plaintiff's principal appraiser had worked with the company for decades.

Both the plaintiff and the government expert used both comparable public companies analysis [market] and income approaches to some degree. Income based valuations used historical, not prospective data. Both experts deducted discounts for lack-of-marketability, which were both reasonable. Family restrictions were also taken into account, and so were the effects of the 2008 recession on the industry and thus on values.

You can read the opinion at <http://www.NYNJCT-BV.com/Kress v. US.html>

## **The Connecticut Court of Appeals Flags an Impermissible Double Dipping in a Divorce Case**

In *Oudheusden v. Oudheusden* [190 Conn App 169] the Connecticut Court of Appeals on May 21, 2019 remanded the case so that the double dipping issue be resolved. In this matter, the husband owned 2 business worth \$550,000 and these were his only source of income. The original court had split the value of the businesses equally, then required the husband to pay support, a clear case of “double dipping.”

“The general principle is that a court may not take an income-producing asset into account in its property division and also award alimony based on that same income,” the appeals court wrote.

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J.L. Pierson, ASA, ARM-BV is an experienced business appraiser who supports the NY, NJ and CT business communities from his base in Darien, CT. His clients are closely-held businesses with revenues of up to \$300 million in all industries, as well as owners of family limited partnerships/LLCs, professional corporations and their advisors. He specializes in business valuation for estate/gift tax, succession planning, sale/purchase and litigation such as shareholder and corporate disputes and divorce, corporate development and transaction support purposes. This newsletter is generated internally to reflect key development in BV which may affect clients and prospects.; it does not constitute legal advice. ©J.L. Pierson & Co. LLC 2019

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**J.L. PIERSON, ASA, ARM-BV**  
368 Heights Road # 2392  
Darien, CT 06820

**<http://www.NYNJCT-BV.COM>**  
**(203) 325-2703**  
**(203) 434-4648**

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