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ACTION ON DECISION

Subject:: Eisenberg v. Commissioner,
155 F. 3d 50 (2d Cir. 1998), rev'g T.C. Memo. 1997-483
T. C. Dkt. No. 17267-95

Issue: Whether a discount for potential capital gains tax liabilities may be applied in valuing closely-held stock.

Discussion: The taxpayer made several transfers to her son and grandchildren of shares in her closely-held C corporation. She timely filed gift tax returns for these transfers. On these returns, the taxpayer discounted the value of the gifts by an amount she attributed to the potential capital gains tax liability of the corporation upon liquidation, or upon the sale or distribution of its assets. The Commissioner disputed this discount and issued notices of deficiency. On cross motions for summary judgment, the Tax Court found for the Commissioner. It held that :

no reduction in the value of closely held stock to reflect potential capital gains is warranted where the evidence fails to establish that a liquidation of the corporation or sale of the corporation's assets is likely to occur. Ward v. Commissioner, 87 T.C. 78, 103-104 (1986); Estate of Andrews v. Commissioner, 79 T.C. 938, 942 (1982); Estate of Piper v. Commissioner, 72 T.C. 1062, 1087 (1979); Estate of Robinson v. Commissioner, 69 T.C. 222, 226 (1977); Estate of Cruikshank v. Commissioner, 9 T.C. 162, 165 (1947).

Eisenberg v. Commissioner, T.C. Memo. 1997-483.

The Second Circuit reversed the Tax Court and held that, in valuing closely-held stock, a discount for the built in capital gains tax liabilities could apply depending on the facts presented. The court noted that the Tax Court itself had recently reached a similar conclusion in Estate of Davis v. Commissioner, 110 T.C. 530 (1998).

We acquiesce in this opinion to the extent that it holds that there is no legal prohibition against such a discount. The applicability of such a discount, as well as its amount, will hereafter be treated as factual matters to be determined by competent expert testimony based upon the circumstances of each case and generally applicable valuation principles.

Recommendation: Acquiescence

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