

Estate and Gift Valuation Update

Business Valuation Workshop

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Estate and Gift Valuation Update

- 2008 Court Cases
- Appraiser Penalties
- Outlook

2008 Court Cases



2008 Court Cases

- Estate & Gift Tax Cases
- Louisiana Cases

Estate & Gift Tax Cases

- Estate of Jelke v. Commissioner
- Estate of Rector v. Commissioner
- KSP Investments, Inc. v. United States
- Estate of Mirowski v. Commissioner
- Astleford v. Commissioner
- Holman v. Commissioner
- Bergquist v. Commissioner
- Gross v. Commissioner

Estate of Jelke v. Commissioner

- Date: November 15, 2007
- Court: United States Court of Appeals
- Issue: Approval of 100% Discount for Imbedded Capital Gains

Estate of Rector v. Commissioner

- Date: December 13, 2007
- Court: United States Tax Court
- Issue: “Bad Facts” case dealing with 2036(a). There was no evidence in either case that the FLP had any substantial, nontax business or investment purpose.

KSP Investments, Inc. v. United States

- Date: January 17, 2008
- Court: United States District Court
- Issue: *Daubert* attack is defended by IRS expert by criticizing key elements of valuation approaches. A certified appraiser is not required for expert witness.

Estate of Mirowski v. Commissioner

- Date: March 26, 2008
- Court: United States Tax Court
- Issue: A good example of good planning and effective presentation of a Family Limited Partnership or Limited Liability Company case in Tax Court.

Astleford v. Commissioner

- Date: May 5, 2008
- Court: Federal
- Issue: Discounts and appropriate methods for valuing Family Limited Partnerships.

Holman v. Commissioner

- Date: May 27, 2008
- Court: United States Tax Court
- Issue: The IRS criticizes FLPs and the court addresses minority and LOM discounts, including an interpretation of the holding period component.

Bergquist v. Commissioner

- Date: July 22, 2008
- Court: United States Tax Court
- Issue: Using the correct premise of value for appraisal of donated stock.

Gross v. Commissioner

- Date: September 29, 2008
- Court: United States Tax Court
- Issue: IRS challenges a Family Limited Partnership under IRC Sec. 2511 and related Treasury Regulations for being an indirect gift of assets from the founder to family members.

Louisiana Cases

- Cannon v. Bertrand
- Statham v. Statham
- Adams v. Kern

Cannon v. Bertrand

- Date: April 16, 2008
- Court: Court of Appeals
- Issue: Partnership agreements should include a buy-sell clause, including a direction for the appropriate standard of value and the application of discounts.

Statham v. Statham

- Date: June 11, 2008
- Court: Court of Appeals
- Issue: Decision on whether or not personal or enterprise goodwill should be subject to division in court cases.

Adams v. Kern

- Date: June 19, 2008
- Court: Court of Appeals
- Issue: The liability that CPAs face by valuing real estate LLCs under old AICPA standards.

Appraiser Penalties



Appraiser Penalties

- Overview
- Pension Protection Act of 2006
- Small Business Work Opportunity Act
- Memorandum AM 2007-12
- Conclusion



Overview

- In 2006, the Pension Protection Act and the Internal Revenue Code Section 6695A, put valuation analysts on notice that the IRS had the authority to impose penalties on appraiser misconduct.
- On May 25, 2007, the Small Business Work Opportunity Act amended the definition of tax returns, which extended appraiser penalties to all tax returns.
- On November 9, 2007, Memorandum AM 2007-17 was released stating that appraisers are subject to Section 6695A penalties when performing appraisals in connection with federal estate and gift taxes.

Pension Protection Act of 2006 ("PPA")

- Value used for a return or claim for income tax refund is either substantially or grossly misstated if:
 - The value used is 150% higher than the value determined by the Service or courts, or
 - The appraised value is 200% higher than the value determined by the Service or courts.

Pension Protection Act of 2006 cont...

- Value used for a federal gift or an estate tax return is substantially misstated or grossly misstated if:
 - The appraised value is 65% lower than the value determined by the Service or the courts
 - The appraised value is 40% lower than the value determined by the Service or the courts.

Pension Protection Act of 2006 cont...

- The amount of the appraiser penalty is equal to the lesser of:
 - \$1,000 or 10% of the tax underpayment attributable to the misstatement (whichever is greater) or
 - 125% of the appraisal fee
- In addition to civil penalties, disciplinary action may also be imposed on appraisers and may include suspending or barring an appraiser from preparing appraisals before the DOL or the IRS, as well as appearing before them as an expert witness.

Small Business Work Opportunity Act (“SBWOA”)

- The following was amended:
 - The term “return” means any return of any tax imposed by Title 26, and
 - The term “claim for refund” means a claim for refund of, or credit against, and tax imposed by Title 26
- Little attention was paid to SBWOA until the Memorandum AM 2007-17 was released

Memorandum AM 2007-17

- According to the Memorandum as a result of the SBWOA, the Service may assess a penalty against an appraiser for appraisals prepared after May 25, 2007 which are used in connection with
 - An estate or gift tax return or
 - Claim for refund or credit that results in a gross valuation misstatement

Conclusion

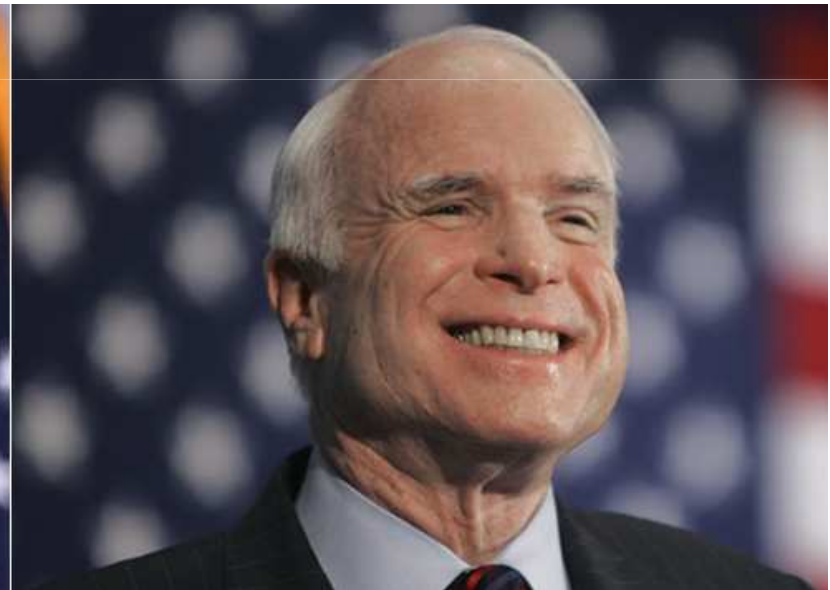
- By passing the PPA and the SBWOA, Congress has given the Service greater authority to impose greater penalties on appraisers.
- As a result, appraisers who prepare valuations that are used to support an income tax return filed after August 17, 2006 are subject to Section 6695A penalties if that appraisal results in a substantial or gross misstatement

Conclusion cont...

- Appraisers who prepare valuations that are used to support an estate or gift tax return filed after May 25, 2007 are subject to Section 6695A penalties if that appraisal results in a gross misstatement.

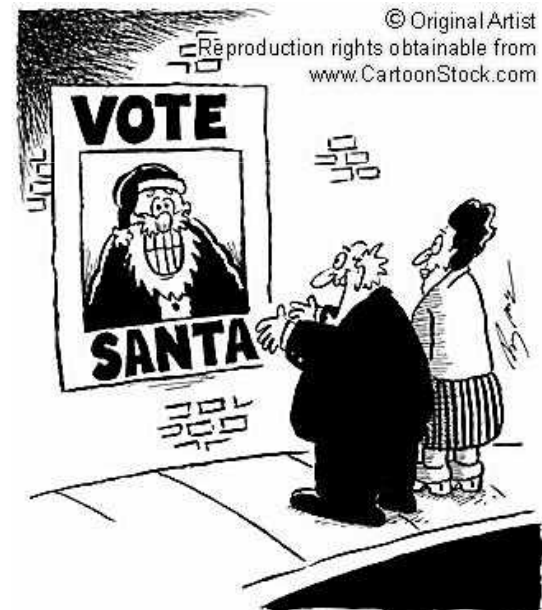
Outlook

As long as things go smoothly in Florida, only one of these will apply at the presentation date



Outlook

- Exemption and Rates
- Portability
- Valuations



"At last, a politician we can trust!"

Exemption and Rates

For 2008, the basic federal estate-tax exemption is \$2MM per person (For 2009, scheduled to jump to \$3.5MM) and the top estate-tax rate is 45%.

- Senator McCain
 - Raise “as soon as possible”
 - \$5MM
 - 15%
- Senator Obama
 - Keep both the same
 - \$3.5MM
 - 45%

Portability

- Both candidates agree that the exemption amount should be easily portable.

Valuations

- Agree on the idea of keeping today's system for valuing inherited property, including stocks and mutual-fund shares.

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