

Rev. Rul. 81-253

Section 2512. -- Valuation of Gifts

26 CFR 25.2512-1: Valuation of property; in general.

July, 1981

[*1]

Valuation; stock; intrafamily transfers; minority discounts. Simultaneous gifts of one-third of the stock of a family controlled corporation to each of the donor's three children are not valued as minority interests for purposes of section 2512 of the Code.

ISSUE

Whether minority discounts should be allowed in valuing for federal gift tax purposes three simultaneous transfers of all of the stock in a closely held family corporation to the donor's three children.

FACTS

The donor, A, owned all of the 90 outstanding shares of stock in corporation X, the sole asset of which is a parcel of real estate. On December 30, 1978, A made simultaneous gifts of one-third (30 shares) of the stock in X to each of A's three children. On that date, the established fair market value of each share of X stock, if all the stock were sold together, was \$100x per share.

At the time the gifts were made, there were no corporate bylaws or other instruments restricting the voting or disposition of corporate shares by any shareholder, and there were no negotiations underway for the disposition of the corporation's assets or the disposition of the shares in question before [*2] or subsequent to the date of the gifts. In addition there is no evidence of the kind of family discord or other factor that would indicate that the family would not act as a unit in controlling the corporation still owns the parcel of real estate and A's children still own the corporate shares.

LAW AND ANALYSIS

Section 2501(a)(1) of the Internal Revenue Code provides that a tax is imposed for each calendar quarter on the transfer of property by gift during such calendar quarter. Section

2512(a) provides that the value of the property at the date of the gift shall be considered the amount of the gift.

Section 25.2512-1 of the Gift Tax Regulations defines the value of property as the price at which such property would change hands between a willing buyer and willing seller, neither being under compulsion to buy or sell, and both having reasonable knowledge of relevant facts. The regulations provide that the value of a particular kind of property is not the price that a forced sale of the property would produce, and that all relevant facts and elements of value as of the time of the gift shall be considered.

Section 25.2512-2(a) of the regulations provides that the value [*3] of stocks and bonds is the fair market value per share or bond on the date of the gift. Section 25.2512-2(f) provides that the degree of control of the business represented by the block of stock to be valued is among the factors to be considered in valuing stock where there are not sales prices or bona fide bid and asked prices. See also Rev. Rul. 59-60, sections 4.01(g), 4.02(g), 1959-1 C.B. 237.

The fair market value of a piece of property depends on the facts and circumstances. Section 3.01, Rev. Rul. 59-60, 1959-1 C.B. 237, *Messing v. Commissioner*, 48 T.C. 505, 212 (1967), acq. 1968-1 C.B. 2. Thus questions of valuation cannot be resolved by mechanical application of formulae and cases involving valuation can often be distinguished. Nonetheless, certain overriding legal principles to which each set of facts is applied govern valuation. *Powers v. Commissioner*, 312 U.S. 259 (1941); *Maytag v. Commissioner*, 187 F.2d 962 (10th Cir. 1951).

Judicial authority is inconsistent regarding the correct legal principle governing the availability of a minority discount in the instant case. Therefore, this ruling is intended to state the Service's position.

Several [*4] cases have held or implied that no minority discount is available when the transferred stock is part of a family controlling interest. *Driver v. United States*, No. 73C 260 (W.D. Wis., Sept. 13, 1976); *Blanchard v. United States*, 291 F. Supp. 248 (S.D. Iowa, 1968); *Richardson v. Commissioner*, No. 95770 (T.C.M. 1943), aff'd, 151 F. 2d 102 (2d Cir. 1945), cert. denied, 326 U.S. 796 (1946); *Hamm v. Commissioner*, T.C.M. 1961-347, aff'd, 325 F.2d 934 (8th Cir. 1963), cert. denied, 377 U.S. 993 (1964). The Service will follow these decisions. Other cases have allowed a minority discount on similar facts. *Whittemore v. Fitzpatrick*, 127 F. Supp. 710 (D. Conn. 1954); *Obermer v. United States*, 238 F. Supp. 29, 34 (D. Hawaii, 1964); *Estate of Piper v. Commissioner*, 72 T.C. 1062 (1979); *Clark v. United States*, Civil Nos. 1308, 1309 (E.D.N.C., May 16, 1975); *Bartram v. Graham*, 157 F. Supp. 757 (D. Conn. 1957); *Estate of Lee v. Commissioner*, 69 T.C. 860 (1978), nonacq. 1980-2 C.B. 2; *Estate of Bright v. United States*, No. 78-2221 (5th Cir., Oct. 1, 1981). The Service will not follow these and similar cases.

It is the position [*5] of the Service that ordinarily no minority discount will be allowed with respect to transfers of shares of stock among family members where, at the time of

the transfer, control (either majority voting control or de facto control) of the corporation exists in the family, *Dattel v. United States*, No. D.C. 73-107-S, (N.D. Miss., Oct. 29, 1975), *Cutbirth v. United States*, Civil No. CA-6-75-1 (N.D. Tex., June 16, 1976). However, when there is evidence of family discord or other factors indicating that the family would not act as a unit in controlling the corporation, a minority discount may be allowed. Although courts have recognized that where a shareholder is unrelated to other shareholders a minority discount may be available because of absence of control, *Estate of Schroeder v. Commissioner*, 13 T.C. 259 (1949), acq. 1949-2 C.B. 3, where a controlling interest in stock is owned by family members, there is unity of ownership and interest, and the shares owned by family members should be valued as part of that controlling interest. This conclusion is based on an evaluation of the facts and circumstances that would affect the price received for the shares in a hypothetical [*6] sale. It is unlikely that under circumstances such as exist in the instant case, shares that are part of a controlling interest would be sold other than as a unit except to a family member in whose hands the shares would retain their control value because of the family relationship. Thus, where a controlling interest in stock is owned by a family, the value per share of stock owned by one family member is the same as stock owned by any other family member and is the same value that would exist if all the stock were held by one person.

HOLDING

No minority discount is allowable and the value of each share of stock for federal gift tax purposes is \$100x.