



# WHEN RESULTS COUNT

## ESTATE AND GIFT E-FLASH

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### Estate of Harriett R. Mellinger v. Commissioner 112 T.C. No.4, January 26, 1999

In another QTIP case, the Tax Court has refused to aggregate shares owned by a QTIP trust and the decedent. The shares in question were in Frederick's of Hollywood. The Tax Court cited Estate of Bonner v. United States, 84 F.3d at 198, among other cases and denied the IRS theory that the assets of the decedent's trust and the QTIP trust should be merged for valuation purposes.

The IRS attempted to argue that Internal Revenue Code Section 2044(c) is a valuation section and not just an inclusion section. Chief Judge Cohen rejected this argument.

The second issue in the case was determination of Fair Market Value. There was no dispute as to the undiscounted value of the shares, but there was disagreement as to the appropriate discount to apply. One of the two taxpayer's experts determined the appropriate marketability discount was 32% and the other 31%. The expert for the IRS determined that a 15% blockage discount was appropriate. Under cross examination, one of the taxpayer experts admitted one of his analyses was flawed and there were several mathematical errors in his calculation. The IRS expert was criticized for relying on a single study in determining the discount, ignoring an entire body of restricted stock studies.

Chief Judge Cohen noted "each expert excluded information that contradicted his result." The judge was

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generally critical of all of the appraisal experts and concluded that none of the experts was correct and a 25% marketability discount was appropriate.

[Click Here for a Complete Copy of the Case](#)

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