



WHEN RESULTS COUNT

ESTATE AND GIFT E-FLASH

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**Estate of Welch v. Commissioner
United States Court of Appeals for the
Sixth Circuit, 2000 U.S. App., Lexis 3315
-Unpublished**

**Estate of Welch v. Commissioner
T.C. Memo 1998-167; 1998 Tax Ct. Memo
Lexis 165; 75 T.C.M. (CCH) 2252; T.C.M.
(RIA) 98167**

The 1998 Tax Court decision by Judge Laro denying the built-in gains tax has been overturned. The reversed and remanded case was filed in Tax Court on May 1, 2000.

In 1998, the estate tax return claimed a deduction for 100% of the potential built-in capital gains tax for appreciated assets within a "C" corporation. The appraiser, whose report was used out of context, did not include the built in gains tax in the determination of fair market value. Judge Laro denied the tax because the sale of the assets and thus the tax itself was speculative. The Judge Laro also noted that an IRC Section 1033 election (involuntary conversion) was available on the property, and there was a net operating loss available to offset at least a portion of any gain. On appeal, the estate cited Eisenberg v. Commissioner, 155 F.3d 50 (2d Cir. 1998), which allowed the built in gains in a gift tax case. The Court of Appeals concluded that the availability of an IRC Section 1033 election did not foreclose a discount in the valuation of the corporation's stock. The Court also noted, "The proper approach in cases of this nature is not to deduct the built-in capital gains tax from the value of the appreciated real estate—as petitioners sought to do in the present case—because the question is not what is the value of the real estate, but what is the value of the stock with regard to all the circumstances, including the built-in potential capital gains liability if and

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when the real estate is sold.”

The Court of Appeals concluded, “The judgment of the Tax Court should be reversed for the reasons set forth above and this case should be remanded to the Tax Court for a hearing on the issue, never determined by the Tax Court, of the market value of the corporations’ stock on the date of the decedent’s death based upon what a hypothetical willing buyer would likely pay for the stock on that date considering all the facts and circumstances at that time, including the built-in capital gains tax on the corporations’ real estate and the availability of a §1033 election. Such a determination requires the presentation of testimony by experts qualified to give opinions based upon the *Eisenberg* method of valuation.”



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