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Tax Valuation E-Flash

Polack v. Commissioner, T.C. Memo 2002-145, June 10, 2002

The Tax Court has upheld the fair market value determined by the IRS for a 1992 gift of non-voting stock.

On December 31, 1992, Leo Polack gifted 1,040,000 non-voting shares of Zip Sort, Inc., a company engaged in the business of printing and preparing bulk mail. These shares represented 52.3% of the non-voting shares outstanding. The taxpayer's expert valued the gifted shares at \$.50 each while the IRS initially valued them at \$1.65 each. Just prior to trial, the IRS engaged an appraiser who valued the shares at \$.88 each and this was the amount argued by the IRS at trial.

There is very little discussion of the appraisals in the Opinion and no information on discount rates used or discounts for lack of control and marketability. On brief, the only items disputed by the taxpayer were the projected income from the bar coding portion of the operation, the

"Petitioner contends we should accept his expert's testimony because his expert is significantly more experienced than respondent's expert."

projected capital expenditures, and a \$170,000 non-operating asset (the nature of which was not disclosed).

The crux of the Court's conclusion appears in a footnote, which says: "*Petitioner contends we should accept his expert's testimony because his expert is significantly more experienced than respondent's expert. As our discussion indicates, our conclusion turns on factual disputes and reflects our finding that petitioner's conclusions regarding disputed factual issues are not grounded on credible evidence. An expert, no matter how skilled, can only work with the factual record he is given by his client or obtains through his own efforts. In this case, petitioner's expert relied primarily on petitioner's unsupported opinion regarding the disputed factual matters.*"

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