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Tax Valuation E-Flash

J. C. Shepherd v. Commissioner, US Court of Appeals for the Eleventh Circuit, No. 01-12250, February 28, 2002

In a two to one decision, the US Court of Appeals for the Eleventh Circuit has affirmed the Tax Court in *J. C. Shepherd v. Commissioner*, 115 T.C. No. 30, October 26, 2000. ([E-Flash 2-18](#))

The taxpayer owned 50% of a newly formed family partnership and his two sons each owned 25%. The taxpayer transferred his fee interest in timberland and his stocks in three banks to the partnership. The Tax Court had ruled that these transfers represented separate indirect gifts to his sons of 25% undivided interests in the leased timberland and stocks. The original case was controversial with eleven judges signing the majority opinion, five judges signing a concurring opinion, eight judges signing a second concurring opinion, three judges signing an opinion concurring in part and dissenting in part, and one judge signing an additional opinion concurring in part and dissenting in part.

The Eleventh Circuit affirmed the majority decision, concluding, "we believe the Tax Court properly found that (1) Shepherd's gift was an indirect gift of land to his sons, and (2) only characteristics of that gift, and not the donee's method of receiving the gift or the stipulated partnership interest discount, were relevant to discounting the value of the gift of land."

The Eleventh Circuit's dissenting opinion said, "The law of this Circuit is clear that the value of a gift for gift tax purposes is not determined when the gift is in the hands of the donor or when the gift is in the hand of the donee; instead, the value of a gift for gift tax purposes is determined when the gift is in no hands, in transit between the donor and the donee." The dissenting opinion also said, "It is clear that the price at which Mr. Shepherd's gifts would change hands between a willing buyer and a willing seller, not being under any compulsion to sell and knowing all relevant facts, would take into account the impact of the partnership. The partnership was a condition of Mr. Shepherd's gifts."

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