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## Tax Valuation E-Flash

### Estate of Jelke et al v. Commissioner, 05-15549, US Court of Appeals for the 11th Circuit, November 15, 2007

The Eleventh Circuit overturned the Tax Court and allowed the estate a dollar-for-dollar reduction in fair market value for the hypothetical tax on trapped-in gains for a "C" corporation minority shareholder.

Decedent owned 6.44% of the common stock of Commercial Chemical Company (CCC), a "C" Corporation. CCC is a holding company whose primary asset was securities. The market values of these securities exceeded the underlying tax bases by \$51 million. Based on the historical portfolio turnover, the Tax Court had assumed the tax on trapped-in gains would be paid over 16 years, and applied a present value calculation to the tax.

The Eleventh Circuit reviewed all of the prior trapped-in gains cases in the various Circuits. It also cited an article by one of the Managing Directors of the Financial Valuation Group in *The Montana Lawyer* that had been previously cited by the Second Circuit in *Eisenberg*. The Court discussed the lack of any plan to liquidate CCC and the inability of a minority shareholder to force a liquidation, but found those factors unpersuasive.

... This 100% approach settles the issue as a matter of law, and provides certainty that is typically missing in the valuation arena.

The Court noted: "The rationale of the Fifth Circuit in the *Estate of Dunn* eliminates the crystal ball and the coin flip and provides certainty and finality to valuation as best it can, already a vague and shadowy undertaking. It is a welcome road map for those in the judiciary, not formally trained in the art of valuation. The *Estate of Dunn* dollar-for-dollar approach also bypasses the unnecessary expenditure of judicial resources being used to wade through a myriad of divergent expert witness testimony, based upon subjective conjecture, and divergent opinions. The *Estate of Dunn* has the virtue of simplicity and its methodology provides a

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practical and theoretically sound foundation as to how to address the discount issue... This 100% approach settles the issue as a matter of law, and provides certainty that is typically missing in the valuation arena. We thereby follow the rationale of the Fifth Circuit in the *Estate of Dunn*, that allows a dollar-for-dollar, \$51 million discount for contingent capital gains taxes..."

One judge dissented, noting, "The tax code is nowhere near the center of my intellectual life, and generally I find estate tax law about as exciting as Hegel's metaphysical theory of the identity of opposites." He found the *Dunn* approach to be overly simplistic and cited Teddy Roosevelt and Henry James as well as various cases in dissenting "from the majority's perilous delusion."