

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM
June 7, 1999

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CASE MIS No.: TAM-122222-98/CC:DOM:P&SI:B7

District Director

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No:
Years Involved:
Date of Conference:

LEGEND:

Decedent	=
<u>a</u>	=
<u>b</u>	=
<u>X</u>	=
<u>c</u>	=
<u>d</u>	=
<u>e</u>	=
<u>f</u>	=
<u>g</u>	=
<u>h</u>	=
<u>i</u>	=
<u>j</u>	=

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k =

l =

ISSUE:

If a discount is appropriate for Decedent's undivided interests in real property, is the discount limited to the estimated cost of a partition of the property?

CONCLUSION:

The fair market value of Decedent's undivided interests in real property is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of all relevant facts. One method for determining the fair market value of an undivided interest in property is to subtract the costs of partition sale from the fair market value of the undivided interests. See Estate of Fittl v. Commissioner, TC Memo 1986-542.

FACTS:

Decedent died testate on a. At the time of Decedent's death, Decedent owned undivided interests in b tracts of real property, known collectively as X. Decedent owned an undivided c percent interest in d of the tracts and an undivided e percent interest in the other f tracts. The combined area of all the tracts is g acres. Decedent's interest in the tracts was reported under item one on Schedule A of Decedent's estate tax return at a value of h.

The return value is based on a appraisal report that showed undivided interest discounts ranging from i percent to j percent. Decedent's pro rata share of the combined values of all the tracts is k. The total amount of the undivided interests discount is l.

LAW AND ANALYSIS:

Section 2031 of the Internal Revenue Code provides that the value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or

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intangible, wherever situated.

Section 20.2031-1(b) of the Estate Tax Regulations provides that the value of every item of property includible in a decedent's gross estate under §§ 2031 through 2044 is its fair market value at the time of the decedent's death, except that if the executor elects the alternate valuation method under § 2032, it is the fair market value thereof at the date, and with the adjustments, prescribed in that section. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property includible in the decedent's estate is not determined by a forced sale price. Nor is the fair market value of an item of property to be determined by the sale price of an item in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item whenever appropriate. Thus, in the case of an item of property includible in the decedent's gross estate, which is generally obtained by the public in the retail market, the fair market value of such item of property is the price at which the item or a comparable item would be sold at retail.

Under § 20.2031-1(b), property generally is included in a decedent's gross estate at its fair market value on the date of the decedent's death. Section 20.2031-1(b), defines fair market value as the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all relevant facts. The willing buyer-willing seller test is an objective test (See e.g., Estate of Watts v. Commissioner, 823 F.2d 483, 485 (11th Cir. 1987) and Furman v. Commissioner, T.C. Memo 1998-157, 158), which requires that a transaction "be analyzed from the viewpoint of a hypothetical seller trying to maximize his profit and a hypothetical buyer trying to minimize his costs, neither being compelled to enter into the transaction, and each having reasonable knowledge of all the relevant facts." 823 F.2d at 485. See also Estate of Bright v. Commissioner, 658 F.2d 999, 1006 (5th Cir. 1981); and Knott v. Commissioner, T.C. Memo 1988-120, 148.

"The valuation of interests in property for federal tax purposes is a question of fact." Estate of Bonner v. United States, 84 F.3d 196, 197 (5th Cir. 1996). See also Estate of Emma Hillebrandt, T.C. Memo 1986-560. In determining the fair market value of property, "the trier of fact must weigh all relevant evidence and draw appropriate inferences." TC Memo 1986-542 at 564. Similarly, the appropriate fractional interest discount is a matter "of fact to be resolved on the basis of the entire record." Estate of Cervin v. Commissioner, T.C. Memo 1994-550, 558, *rev'd on other issue*, 111 F.3d 1252 (5th Cir. 1997)..

Accordingly, the determination of the fair market value of an undivided interest in property for federal estate tax purposes is based on a hypothetical seller/hypothetical buyer analysis, with neither being under any compulsion to buy or sell, taking into

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account all the relevant facts and circumstances. One method for determining the fair market value of an undivided interest in property is to value of the fee, multiply the value of the fee by the undivided interest, and subtract out the share of the costs of partition allocable to the undivided interest.

CAVEAT(S)

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.