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Valuation of Stock in Closely Held Corporations for Federal Estate Taxes

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liarity of the local situation and the aggravating factors involved.

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VALUATION OF STOCK IN CLOSELY HELD CORPORATIONS FOR FEDERAL ESTATE TAXES

Petitioner brought action in the Tax Court to reduce the federal estate tax due on certain closely held corporate stock, valued at $600.00 per share by the Commissioner in a deficiency determination. From the Tax Court's valuation of $375.00 per share, petitioner appealed on the grounds that insufficient weight had been given to the testimony of his expert witnesses whose valuations were from $150.00 to $225.00 per share, and on the grounds that the court had excluded evidence of a $200.00 per share estate tax valuation of stock in the same corporation, which had been made within seven months of the valuation under litigation. On appeal, *held,* affirmed. The Tax Court is not bound by expert testimony where there is substantial evidence in the record to support its finding. A prior valuation of the same stock for one taxpayer is not binding for another and is of little probative force unless reached after a thorough investigation. *Fitts Estate v. Commissioner of Internal Revenue,* 237 F.2d 729 (1st Cir. 1956).

For federal estate tax purposes the value[1] of stock in a closely held corporation is interpreted by the Treasury Regulations to mean the fair market value of the stock at the valuation date. Fair market value is defined as "the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell" and is to be determined only after a consideration of "all relevant facts and elements of value as of the applicable valuation date."[2] The relevant facts to be considered are set forth clearly in both the

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the plaintiff who lived nearby, and damaged it in the get-away. Greenwell v. Prison Commissioner, 101 L.J. News 486 (1951), 68 L.Q. REV. 18 (1951).

Also, as explained in note 9 *supra*, the *Sims* case allowed recovery on a moral duty basis.

1. In the valuation of property to be included in the gross estate both the 1954 Internal Revenue Code and the 1939 Code use the term "value," not the term "fair market value." INT. REV. CODE OF 1954, § 2031; INT. REV. CODE OF 1939, § 811.

2. U.S. Treas. Reg. 105, § 81.10(a) (1942).

Treasury Regulations[3] and the Revenue Rulings,[4] but the weight to be given to each relevant factor in determining fair market value depends upon the circumstances of each case.[5] Decisions indicate that the following factors are most frequently considered by the courts: book value, actual market value of corporate assets, earnings, sales prices for the closely held stock, comparison of stock in the close corporation to stock in similar listed corporations, and dividends. As the first of these factors, book value, depends on the valuation and accounting methods of the company,[6] which for closely held corporations are often weak,[7] it does not provide a good estimate of value for corporate assets, and therefore the courts place little reliance on it where other evidence is available.[8] A somewhat more useful estimate

3. U.S. Treas. Reg. 105, § 81.10(c) (1942), as amended, T.D. 5351, 1944-1 CUM. BULL. 579: "If actual sales or bona fide bid and asked prices are not available, then . . . the value is to be arrived at . . . in the case of shares of stock upon the basis of the company's net worth, earning power, dividend-paying capacity, and all other relevant factors having a bearing upon the value of the stock. Among such other relevant factors to be considered are the values of securities of corporations engaged in the same or a similar line of business which are listed on an exchange."

4. Among the factors listed by the rulings are: nature of business and history of the enterprise, economic outlook, book value and financial condition, earning capacity, dividend-paying capacity, goodwill, sales of stock, and market prices of similar listed corporations. Rev. Rul. 54-57, § 4.01, 1954-1 CUM. BULL. 187. This last factor is also set forth in INT. REV. CODE OF 1954, § 2031(b).

5. U.S. Treas. Reg. 105, § 81.10(c) (1942), as amended, T.D. 5351, 1944-1 CUM. BULL. 579. See also Rev. Rul. 54-57, § 3.01, 1954-1 CUM. BULL. 187.

6. "But the mere fact that the balance sheet states the assets of a corporation to be a given sum is no evidence that such value actually exists." Oxford Paper Co. v. United States, 52 F.2d 1008, 1010 (Ct. Cl. 1931). See also PATON, ACCOUNTANTS' HANDBOOK 466 (3d ed. 1955); 2 PAUL, FEDERAL ESTATE AND GIFT TAXATION 1297, § 18.33 (1942).

7. In Jerecke Mfg. Co., 12 B.T.A. 1165, 1175 (1928), the court recognizes a few of the weaknesses affecting the book value of some closed corporations: "The books, such as they were, . . . did not disclose the existence of a large part of petitioner's machinery and equipment. . . . [C]apital items were often charged to expense. There is nothing peculiar in this when we remember that this was purely a family affair."

8.

	Book Value	Valuation of the Court
Samuel E. Montgomery, 12 CCH Tax Ct. Mem. 1380 (1953)	$ 887.85	$550.00
Mercia C. Montgomery, 12 CCH Tax Ct. Mem. 1380 (1953)	1157.39	625.00
Walter L. Patton, 10 CCH Tax Ct. Mem. 1066 (1951)	414.25	365.00
Martha A. Allison, 5 CCH Tax Ct. Mem. 992 (1946)	188.00	45.00

In the *Montgomery* case the court said: "It is apparent from the record that the respondent's determination was based primarily on the book value of the stock at the end of the years in which Samuel E. and Mercia died. Book value is but one of the factors to be considered and is not necessarily determinative of the question." 12 CCH Tax Ct. Mem. 1380 (1953). But see Succession of Coleman, 147 La. 368, 85 So. 43 (1920); *In re* Frank's Estate, 123 Ore. 286, 261 Pac. 893 (1927).

of asset value may be obtained by revaluation of the corporate assets from book value to actual market value, that is, the estimated amount for which the assets could be sold.[9] But the value placed upon the corporate assets, whether book value or estimated actual market value, is of little significance in determining fair market value of stock in a corporation,[10] for it is the value of the corporation as a going concern which is the essence of the concept of fair market value, and asset values usually do not reflect going concern value.[11] However, actual market value is important where it is reflective of going concern value. Thus, it is important in determining the value of stock of investment and personal holding companies,[12] and corporations whose underlying assets consist mostly of real estate.[13] In general, actual market value is not given much weight in corporations selling products and services,[14] in growing enterprises where the main consideration is going concern value,[15] and in valuing preferred stock[16] and minority holdings,[17] the values of which, due to the lack of control by preferred and minority holdings, are usually far less than their proportionate share of corporate assets. At

9. Spreckle-Rosekrans Inv. Co. v. Lewis, 146 F.2d 982, 984 (1945); Rev. Rul. 54-77, § 4.02(c); 1954-1 CUM. BULL. 187.

10. Actual market value is useful, however, where other valuation factors are unreliable or unavailable. *In re* Nathan's Estate, 166 F.2d 422 (9th Cir. 1948) (earnings distorted by extraordinarily low interest rates on large loans to stockholders and affiliates and dividends paid in excess of earnings); Melville Hanscom, 24 B.T.A. 173 (1931).

11. Actual market value of assets is important where liquidation is imminent, for then the fair market value of the corporate stock is no longer based on the value of the corporation as a *going* concern. But book value usually does not coincide with actual market value; thus, book value is not a reliable valuation factor, for it usually cannot be realized even on liquidation.

12. Kinney's Estate v. Commissioner, 80 F.2d 568 (9th Cir. 1935), where decedent's 1/9 interest in a trust was valued at 1/9 of the company's net worth, the shares of which were held by the trust. Rev. Rul. 54-77, § 4.02(c); 1954-1 CUM. BULL. 187: assets of investment type should be revalued to market and book value adjusted accordingly; Rev. Rul. 54-57, § 5(a); 1954-1 CUM. BULL. 187: in investment companies, greatest weight should be given to assets underlying the security; Rev. Rul. 54-77 § 5(b); 1954-1 CUM. BULL. 187: the appraiser should determine fair market values for the corporation's assets, and the adjusted net worth should be given greater weight in personal holding companies. *But see* Blackard v. Jones, 62 F. Supp. 234 (W.D. Okla. 1944) (valuation of holding company stock based on asset value was rejected because "all relevant facts" were not considered).

13. Henry E. Huntington, 36 B.T.A. 698, 714 (1937) (earnings were from sales of real estate); Melville Hanscom, 24 B.T.A. 173 (1931).

14. The rulings emphasize that earnings should receive primary consideration in such companies. Rev. Rul. 54-77, § 5(a), 1954-1 CUM. BULL. 187.

15. James Couzens, 11 B.T.A. 1040, 1171 (1928).

16. Oxford Paper Co. v. United States, 52 F.2d 1008, 1010 (Ct. Cl. 1931).

17. Mathilde B. Hooper, 41 B.T.A. 114, 129 (1940), citing Cravens v. Welsh, 10 F. Supp. 94 (S.D. Cal. 1935).

times, a property's worth may be better represented by its cost than by its actual market value.[18]

Earnings are another important factor in determining the worth of stock in a close corporation, for the value of stock at any given date is the present worth of the estimated future corporate earnings.[19] Estimated future earnings may be capitalized at a normal rate of return to aid in finding the fair market value of the closely held stock.[20] But past earnings as shown by the company's records often require adjustment before being used as a basis for estimated future earnings.[21] Once such earnings have been adjusted, an appropriate capitalization rate must be found.[22] Due to wide variations in earnings rates between companies in the same industry and fluctuations in earning ratios from year to year because of changes in economic conditions, no standard rates have been established.[23] The use of capitalization of earnings as a method of valuation has been further limited by the opposition of many courts to capitalization rates used by witnesses which are based on the witness's experience, but which the courts contend have no other logical basis.[24]

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18. Guggenheim v. Rasquin, 312 U.S. 254 (1941) (where, as in a single payment life insurance policy, cost, the amount at which a similar policy could be purchased at a given date, reflects all of the economic benefits of the policy, viz., the immediate cash surrender value and the immediate insurance rights). See also Powers v. Commissioner, 312 U.S. 259 (1941); United States v. Ryerson, 312 U.S. 260 (1941).

19. James Couzens, 11 B.T.A. 1040, 1170 (1928): "Earnings may be fairly looked upon as reflecting the financial progress and condition of the business. . . . [They] are the test of success of the past and the indication of the future . . . [Other factors] are significant . . . only in their relation to earnings." See also Mathilde B. Hooper, 41 B.T.A. 114 (1940).

20. DuPont v. Deputy, 26 F. Supp. 773 (D. Del. 1939); Eugene H. Kelly, 14 CCH Tax Ct. Mem. 476 (1955). *But see* Succession of Coleman, 147 La. 367, 85 So. 43 (1920); *In re* Frank's Estate, 123 Ore. 286, 261 Pac. 893 (1927).

For a good general discussion of the use of capitalization of earnings as a basis for valuing corporate stock see LOWNDES & KRAMER, FEDERAL ESTATE AND GIFT TAXES 485-88 (1956).

21. Bank of California v. Commissioner, 133 F.2d 429 (9th Cir. 1943) (most of assets producing past earnings had been disposed of); Augustus E. Staley, 41 B.T.A. 752 (1940); Mathilde B. Hooper, 41 B.T.A. 114 (1940) (periods of abnormal earnings should not be used).

Adjustments are often necessary in the corporate accounting to arrive at a profit figure which is truly reflective of future earnings potential, e.g., adjustment of bad debt and depreciation allowances, changes in method of inventory valuation, elimination of non-recurring gains and losses. PATON, ACCOUNTANTS' HANDBOOK 869-70 (3d ed. 1955).

A discussion of methods of valuing a going concern with a program of valuation is outlined *id.* at 867-80.

22. *Id.* at 873: "The normal rate is that rate of return which will attract to and maintain in a particular field a supply of capital and entrepreneurial ability sufficient to maintain its relative position in view of the fundamental conditions of demand and supply."

23. Rev. Rul. 54-77, § 6; 1954-1 CUM. BULL. 187.

24. Eugene H. Kelly, 14 CCH Tax Ct. Mem. 476, 484 (1955): "It was again

It has been generally held that actual sale prices of stock, when reasonably near the valuation date, are the best evidence of fair market value.[25] But for the taxpayer to utilize this evidence he must show that the prices were reached between informed and willing buyers and sellers, when neither was under any compulsion to buy or sell.[26] But sales in small lots, forced sales, and inter-family transactions will not be considered as establishing a fair market price.[27] Prices in previous small-lot sales may be reduced if the taxpayer can show that the limited market could not readily absorb the larger block being valued.[28] In establishing fair market value for closely held shares, the Code encourages the comparison of close corporations with similar listed corporations,[29] but the required similarity has proven difficult to establish, and such comparison has not, as yet, been too effective.[30] Because dividend policy is important in determining the market price of listed stocks,[31] dividend payments have been used in finding the fair market value of closely held shares.[32] But the stockholders' control over dividend payments

apparent that the capitalization rate [used by witness] was an unsupportable rule-of-thumb."

25. Elmhurst Cemetery Co. v. Commissioner, 300 U.S. 37 (1937); Richardson v. Commissioner, 151 F.2d 102, 103 (2d Cir. 1945), cert. denied, 326 U.S. 796 (1946); Leonard B. McKitterick, 42 B.T.A. 130, 136 (1940); Augustus E. Staley, 41 B.T.A. 752, 769 (1940).

26. Robertson v. Routzahn, 75 F.2d 537, 539 (6th Cir. 1935); Brooks v. Willcuts, 78 F.2d 270, 272 (8th Cir. 1935); U.S. Treas. Reg. 105, § 81.10(a) (1942).

27. Cotton v. Commissioner, 165 F.2d 987 (9th Cir. 1948) (less weight given to interfamily transactions); Laird v. Commissioner, 85 F.2d 598, 599 (3d Cir. 1936); Brooks v. Willcuts, 78 F.2d 270, 272 (8th Cir. 1935) (prices at forced sale not representative of fair market value); Charles H. M. Atkins, 10 CCH Tax Ct. Mem. 997 (1951) (a few sales not conclusive); Mathilde B. Hooper, 41 B.T.A. 114, 128 (1940). See also Wood v. United States, 29 F. Supp. 853, 859 (Ct. Cl. 1939); U.S. Treas. Reg. 105, § 81.10(a) (1942); Rev. Rul. 54-77, § 4.02(g), 1954-1 CUM. BULL. 187.

28. Richardson v. Commissioner, 151 F.2d 102, 103 (2d Cir. 1945), cert. denied, 326 U.S. 796 (1946); Augustus E. Staley, 41 B.T.A. 752, 775 (1940). See also Leonard B. McKitterick, 42 B.T.A. 130 (1940).

29. INT. REV. CODE OF 1954, § 2031(b).

30. Eugene H. Kelly, 14 CCH Tax Ct. Mem. 476, 483 (1955); Augustus E. Staley, 41 B.T.A. 752 (1940); Rev. Rul. 54-77, § 4.02(h), 1954-1 CUM. BULL. 187: "The test should be for similarity not only of the type of business but of the trend of earnings, capital structure, volume of sales, and size, in terms of total assets, as well, in order that the most valid comparison possible will be obtained." *But see* Oxford Paper Co. v. United States, 56 F.2d 895 (Ct. Cl. 1932); Drayton Cochran, 7 CCH Tax Ct. Mem. 325 (1948).

31. Johnson, Shapiro & O'Meara, *Valuation of Closely-Held Stock for Federal Tax Purposes: Approach to an Objective Method*, 100 U. PA. L. REV. 166, 170 (1951): "Of the three factors examined [earnings, book value, and dividends] book value is the least dependable and annual dividends the most reliable index to the price of industrial common stocks on the New York Stock Exchange."

32. Drayton Cochran, 7 CCH Tax Ct. Mem. 325 (1948) (dividends capitalized at average yield of stocks in comparable listed corporations); Augustus E. Staley, 41 B.T.A. 752, 775 (1940).

is so great in such corporations that dividends are not as reliable as other factors in determining fair market value of the stock.[33] It has been held by some courts that events subsequent to the valuation date may be considered in finding fair market value, but the weight to be given such subsequent events remains unsettled.[34] However, where a prior estate tax valuation of the same closely held shares had been made just subsequent to the valuation date in question, the prior valuation was admitted as evidence but held not controlling as being only one of the relevant factors to be considered in determining fair market value.[35]

The ruling in the instant case that the court is not bound by expert testimony where there is substantial evidence to support the court's findings is in complete accord with prior jurisprudence,[36] and the holding that the weight to be given by the court to such expert testimony must depend upon the facts of each case is firmly established by regulation and judicial decision.[37] The instant case also adheres to the principle that petitioner has the burden of showing that the value found is erroneous, although he need not prove a correct value.[38] However, the Tax Court's

33. Rev. Rul. 54-77, § 4.02(e), 1954-1 CUM. BULL. 187: "The individual or group in control can substitute salaries and bonuses for dividends, thus reducing net income and understating the dividend paying-capacity of the company. It follows, therefore, that dividends are less reliable criteria of fair market value than other applicable factors."

34. Schnorbach v. Kavanaugh, 102 F. Supp. 828 (W.D. Mich. 1951); Charles E. Kimball, 5 CCH Tax Ct. Mem. 982, 986 (1946) (subsequent events may be considered only if reasonably foreseeable); James Couzens, 11 B.T.A. 1040, 1165 (1928) (subsequent events may establish expectations and whether they are reasonable).

35. Warren H. Poley, 6 CCH Tax Ct. Mem. 288, 293 (1947); *cf.* T. J. Coffey, Jr., 14 T.C. 1410, 1420 (1950) (dicta). See also Sneath Glass Co., 14 B.T.A. 705, 708 (1928): "While the former determination *is evidential* it is not of sufficient weight to overcome the burden which rests on the petitioners." (Emphasis added.)

36. Elmhurst Cemetery Co. v. Commissioner, 300 U.S. 37, 40 (1937); *In re* Nathan's Estate, 166 F.2d 422, 425 (9th Cir. 1948); Bank of California v. Commissioner, 133 F.2d 428, 432 (9th Cir. 1943); O'Bryan Bros. v. Commissioner, 127 F.2d 645, 646-47 (6th Cir. 1942); Rogers v. Commissioner, 107 F.2d 394, 395 (2d Cir. 1939); Gamble v. Commissioner, 101 F.2d 565, 567 (6th Cir. 1939), cert. denied, 306 U.S. 664 (1939); Emerald Oil Co. v. Commissioner, 72 F.2d 681, 683 (10th Cir. 1934); Tracy v. Commissioner, 53 F.2d 575, 577 (6th Cir. 1931).

37. *In re* Nathan's Estate, 166 F.2d 422, 427 (9th Cir. 1948): "Objections to their testimony [expert witnesses] urged by petitioner go to its weight rather than its admissibility. The weight to be given such testimony was a matter for the Tax Court, not this court to decide." U.S. Treas. Reg. 105, § 81.10(c) (1942), as amended, T.D. 5351, 1944-1 CUM. BULL. 579.

38. Plant v. Munford, 188 F.2d 543, 545 (2d Cir. 1951) (petitioner must also establish essential facts from which a correct determination might be made); Vereen v. Allen, 75 F. Supp. 406 (M.D. Ga. 1947); Schlegel v. United States, 71 F. Supp. 495, 497 (W.D. N.Y. 1947); Worchester County Trust Co. v. Commissioner, 134 F.2d 578, 580 (1st Cir. 1943); Kinney's Estate v. Commissioner, 80 F.2d 568, 572 (9th Cir. 1935); Roth v. Wardell, 77 F.2d 124 (9th Cir. 1935); Augustus E. Staley, 41 B.T.A. 752, 774 (1940).

refusal to admit evidence of the prior valuation of the same stock is questionable. Although there was no indication of whether the valuation was reached by investigation or by mere compromise and granted that it could have been accorded but little weight in determining fair market value, similar cases[39] and the well-established rule that all relevant facts and elements of value should be considered in every case[40] would seem to indicate that such a recent valuation of the same stock should have been admitted as one of the relevant facts to be considered in determining fair market value.

To obtain more certainty in the valuation of closely held stocks, it has been proposed that the "all relevant factors" requirement be eliminated, and that net asset value, including any goodwill and "going concern value" be used as a standard for valuation.[41] Another recommendation is that methods of statistical analysis be applied to financial data of listed corporations. If listed corporations were divided into industrial categories and the statistical measure of the standard error of estimate were used to establish the price ranges into which most of such listed stocks would fall,[42] then these price ranges could be considered

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39. See note 35 *supra*.

40. Cotton v. Commissioner, 165 F.2d 987 (9th Cir. 1948); Commissioner v. McCann, 146 F.2d 385 (2d Cir. 1944); Wishon v. Auglim, 42 F. Supp. 359 (N.D. Cal. 1941); Wood v. United States, 29 F. Supp. 853 (Ct. Cl. 1939); Jan Willem Nienhuys, 17 T.C. 1149 (1952); Charles E. Kimball, 5 CCH Tax Ct. Mem. 982 (1946); U.S. Treas. Reg. 105, § 81.10(a) (1942).

But only one main factor may be the basis of value where there is no substantial evidence in opposition. Elmhurst Cemetery Co. v. Commissioner, 300 U.S. 37 (1937). "Any one of these [factors] alone may be determinative, although the probabilities are that all the factors weighed and balanced against each other will give the more accurate results." MERTENS, LAW OF FEDERAL INCOME TAXATION 52, § 59.25 (1948).

41. Rice, *The Valuation of Closely Held Stocks: A Lottery in Federal Taxation*, 98 U. PA. L. REV. 367, 384 *et seq.* (1950).

42. The standard error of estimate is used to measure the correlation between two variables, that is, the extent to which changes in one variable are followed by changes in the other. The average relationship between the two variables (the *line of regression*) is found for the whole series of data, and the standard error of estimate is the measure of deviation from this line of average relationship. The standard error of estimate is based upon the same concept as the standard deviation and is computed in the same manner, it being the square root of the mean of the squared deviations. Thus, where S_Y = the standard error of estimate, and $Y - Y_c$ = the deviation from the line of regression, the standard error of estimate may be expressed:

$$S_Y = \sqrt{\frac{\Sigma (Y - Y_c)^2}{N}}$$

The interpretation of the standard error of estimate is based on the fact that in a normal distribution in the area of $\pm S_Y$ from the line of regression 68.27% of the data will fall; within $\pm 2 S_Y$, 95.45%; and within $\pm 3 S_Y$, 99.73%. SIMPSON & KAFKA, BASIC STATISTICS 370-83 (1952).

Thus, if the standard error of estimate were computed for industrially grouped, as limits in the valuation of stock in comparable close corporations.[43] Perhaps the most promising method suggested for finding the fair market value of closely held corporate stock is a method often used by investors — capitalization of average earnings of the corporation being valued by use of a multiplier based upon the price-earnings ratios of comparable listed stocks.[44] The importance of earnings in determining the value of corporate stocks is well recognized.[45] To make use of the earnings factor through the price-earnings ratio theory and yet to allow the court a range of values within which it may adjust the value of the closely held shares for "relevant factors" other than earnings, both a maximum and a minimum multiplier could be used, based upon the maximum and minimum rates of return established for comparable listed stocks. This method of valuation would provide more certainty in valuation proceedings by establishing a definite range of values; yet, by leaving the courts an area within which they may exercise discretion, this valuation method, which has been recommended for investment purposes,[46] may avoid the opposition of the courts to specific capitalization rates.[47]

These solutions to the valuation problem require the publication of complex financial data for listed corporations or involved statistical studies. However, even without such publications or studies, the courts themselves can provide more certainty in this area of the law by presenting in their opinions a brief analysis of the criteria of valuation used by experts, by indicating in each case what factors of valuation the court considers

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listed stocks using earnings, dividends, or book value (preferably earnings) as the independent variable and the price of the stock as the dependent variable, a price range could be determined into which the majority of listed stocks in the given industry would fall.

43. Johnson, Shapiro & O'Meara, *Valuation of Closely Held Stock for Federal Tax Purposes: Approach to an Objective Method*, 100 U. PA. L. REV. 166, 170 (1951).

44. Dakin, *Legal Aspects of the Valuation of Corporate Stocks of Closely Held Corporations*, SIXTH ANNUAL TULANE TAX INSTITUTE 379 (1957).

45. 1 BONBRIGHT, VALUATION OF PROPERTY 347 (1937) : "Ordinarily, value of corporate assets is considered, not by itself, but in conjunction with the record of corporate prosperity. The latter record should preferably be established by net earnings." GRAHAM & DODD, SECURITY ANALYSIS 333, 493 (1951) : " 'The value of the business as an entity' is most often dominated by its earning power." "The present investment value of a common stock essentially depends upon the future income to be expected from it." LOWNDES & KRAMER, FEDERAL ESTATE AND GIFT TAXES 500 (1956) : "In valuing stock in a corporation for which there is no satisfactory market, the first factor which is usually considered is the earning record and capacity of the corporation." See also 2 PAUL, FEDERAL ESTATE AND GIFT TAXATION 1289, § 18.29 (1942) ; notes 19 and 20 *supra*.

46. GRAHAM & DODD, SECURITY ANALYSIS 333, 493 (1951).

47. See note 26 *supra*.

most important,[48] and by showing how these factors of valuation are applied in finding fair market value.[49] Opinions written in this manner would give at least some stability to the law of valuation of closely held stocks. The ruling in the instant case that a recent valuation of stock in the same corporation was properly excluded from evidence because there was no way of determining how the valuation had been made clearly indicates the great need for both the courts and the Commissioner to show *how* they determine fair market value in each case. If, as it appeared in this case, there are no substantially different factors which would affect the valuation, certainly the taxpayer is reasonable in expecting that a recent valuation of stock in the same corporation would be given weight in a later valuation. Were the courts to render more complete, well-reasoned opinions, they would be able to enforce such reasonable expectations.

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48. For cases showing that the court should indicate what factors are most important see Richardson v. Commissioner, 151 F.2d 102, 105 (2d Cir. 1945), cert. denied, 326 U.S. 796 (1946) (no ruling by trial judge on conflicting views as to the proper standard of valuation) ; Bank of California v. Commissioner, 133 F.2d 428, 432 (9th Cir. 1943) (considering the factor of marketability the court says: "This was a factor to be considered in determining the fair market value of the stock. We cannot say that it was disregarded." But neither can they say if it were considered.) Jan Willem Nienhuys, 17 T.C. 1149 (1952) ; Samuel R. Penney, 11 CCH Tax Ct. Mem. 379 (1952) ; Charles H. M. Atkins, 10 CCH Tax Ct. Mem. 997 (1951) ; Justin Potter, 7 CCH Tax Ct. Mem. 240 (1948).

Rice, *The Valuation of Closely Held Stocks: A Lottery in Federal Taxation*, 98 U. PA. L. REV. 367, 385 (1950) : "The requirement for consideration of 'all relevant factors' has been interpreted in practice to mean that the decision shall not be placed on any specific factors. It thus becomes an instrument for concealing, rather than expressing, thought. As a result, the Commissioner and the courts avoid explaining exactly how they reached their respective decisions."

49. The courts occasionally admit their failure to present sufficient reasoning in opinions: Richardson v. Commissioner, 151 F.2d 102, 105 (2d Cir. 1945), cert. denied, 326 U.S. 796 (1946) ; Worchester County Trust Co. v. Commissioner, 134 F.2d 578, 581 (1st Cir. 1943) (no direct explanation of how commissioner and board had reached value) ; Kinney's Estate v. Commissioner, 80 F.2d 568, 572 (9th Cir. 1935) ("The most that courts can do is to correct obvious abuses") ; Patterson v. Commissioner, 42 F.2d 148, 149 (2d Cir. 1930) ("Probably it is true that the holder of such shares must usually be content with the guess of the commissioner. . . . The inquiry is essentially conjecture") ; Amy H. DuPuy, 9 T.C. 276, 284 (1947).

But some cases show helpful analysis and fine reasoning: Whittemore v. Fitzpatrick, 127 F. Supp. 710, 722 (D. Conn. 1954) ; Wishon v. Anglim, 42 F. Supp. 359, 361 (N.D. Cal. 1941) ; Rheinstrom v. Willcuts, 26 F. Supp. 306 (D. Minn. 1938) ; Oxford Paper Co. v. United States, 52 F.2d 1008, 1010 (Ct. Cl. 1931) (after discussing the most important element, the court says, "Proceeding in this manner. . . ." By this simple device the court indicates the basis for its decision).