Dispute Resolution Insights

How to Approach Federal Estate and Gift Tax Valuation Disputes

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Many estate and gift tax disputes with the Internal Revenue Service involve the valuation of assets. In these disputes, the most successful taxpayers rely on experienced legal counsel. And, the most successful legal counsel know when and how to rely on experienced valuation analysts.

INTRODUCTION

When a taxpayer is facing a large valuation adjustment in a federal estate or gift tax audit, a vigorous defense is usually a good investment. The experience of practitioners and the available statistics both indicate that the Internal Revenue Service (the “Service”) is likely to concede a significant portion of the adjustment if the taxpayer takes a reasonable position and commits the resources necessary to develop and present the case.

The taxpayer’s legal representative can gain an edge in any tax dispute by understanding the Service’s procedures and institutional imperatives. This discussion summarizes procedures and suggests tactical considerations and practice tips.

The discussion relates primarily to estate tax matters, but the procedures are generally the same for gift tax matters.

THE LIKELIHOOD OF AN EXAMINATION

Of the federal estate tax returns filed in 2008, 9.3 percent were audited.1 The chance of an audit increased to 21.6 percent, if the gross estate was $5 million or more.2 The large majority of estate tax audits resulted in proposed changes.

For returns reporting a gross estate of $5 million or more, the average recommended additional tax per return was $654,383.3 Most of the additional tax was concentrated in 115 cases that produced unagreed tax adjustments in the total amount of approximately $990 million, or an average of $8.6 million each.4

These figures reflect a substantial increase in unagreed tax adjustments, relative to other recent years. While the number of returns producing unagreed tax adjustments has remained roughly constant, the total amount of unagreed tax adjustments was approximately $228 million for returns filed in 2007 and $382 million for returns filed in 2006.5

The number of estate tax examinations decreased over the last several years, as the Bush Administration sought to reduce available enforcement resources.6 However, the number of large estates and the size of the estates roughly doubled over the course of a decade.7

For comparison, a return reporting a gross estate of $5 million or more in 1999, was subject to a 27.8 percent likelihood of audit.8

Under current practice, all federal estate tax returns are filed with the Cincinnati Service Center, which reviews the returns for completeness and computational accuracy. In addition, the Service estate tax examiners on assignment in Cincinnati from each administrative territory review estate tax returns for audit potential.

Federal gift tax returns are filed with the Cincinnati Service Center as well, and they undergo a similar review process. For federal gift tax returns filed in 2006, the chance of an audit was only 0.6 percent.9

The Service may have less incentive to audit gift tax returns. This is because opportunities to review
gifts sometimes arise at a later time, such as in connection with an estate tax audit. For example, if a taxpayer files a gift tax return and fails to disclose a taxable gift, in a manner adequate to apprise the Service of the nature of the gift, then the Service may assess tax at any time, pursuant to Section 6501(c)(9).

The three major levels of review for federal estate or gift tax returns are as follows:

1. examination by the estate tax attorney
2. administrative review in the appeals office
3. litigation in U.S. Tax Court or other federal court

While other dispute resolution procedures are available under certain circumstances, these other procedures are largely outside the scope of this discussion.

THE EXAMINATION PROCESS

Estate tax examiners are more highly credentialed than other auditors. Each is a member of the bar and carries the title of estate tax attorney.

Because they work principally on estate and gift tax matters, they are typically quite knowledgeable about the law governing valuations. And, they have a good deal of experience working with valuation reports.

The goal of the estate tax attorney in any examination is to ascertain the correctness of the tax return. In principle, the estate tax attorney acts as a fact-finder. They have broad authority to examine books, records, and witnesses.

In matters involving the valuation of assets, they exercise this authority to verify the premise of the taxpayer’s valuation and to obtain information useful to the Service valuation expert, in the event they seek expert assistance. If necessary, the estate tax attorney can invoke the Service summons power under Section 7602.

Examination techniques followed by the estate tax attorney are described in Examination Technique Handbook for Estate Tax Examiners. This handbook provides guidance to the estate tax examiner on many issues, including valuation.

The types of assets specifically discussed in the Handbook include real property, stocks and bonds, mortgages and notes, life insurance, and various jointly owned property.

Technically, the estate tax attorney has no authority to settle a case based on the hazards of litigation. Because valuation is an issue of fact, however, they have considerable latitude to resolve valuation matters.

Resolution at this level, if possible, is cost-effective for the taxpayer in terms of fees paid to accountants, lawyers, and valuation analysts. A quick resolution is also beneficial to the Treasury, for which the conservation of enforcement resources is an increasing necessity.

Furthermore, the estate tax attorney has a personal incentive to reach an agreement with the taxpayer, because agreed adjustments are less work to prepare.

While the documentation requirements for adjustments accepted by the taxpayer are relatively modest, the estate tax attorney has to write a detailed explanation of unagreed adjustments.

While the Service does not release data on this point, we understand that the great majority of estate tax examinations are resolved with the estate tax attorney. We believe this includes most examinations centered on valuation issues.

From the taxpayer’s perspective, sometimes the most pressing reason to seek resolution at the examination level is to curtail scrutiny of the tax return or the valuation report that the tax return relies on. If the valuation report is flawed, then the fewer levels of review, the better.
Ordinarily, an appeals officer does not raise new issues or look into items agreed to at the examination level. However, they are not foreclosed from doing so. Technically, all issues remain open in the event of an appeal. In any event, valuation is usually not reducible into smaller items.

If valuation is not agreed to at the examination level, then the appeals officer may consider any relevant factors, potentially including factors that the examiner did not dwell on.

If the estate would like to pursue a resolution with the examiner, we suggest starting early. The policy of the Service is to try to complete the examination of an estate tax return within 18 months after the filing of the return. Under Section 6501(c)(4), the three-year limitations period for assessment cannot be extended with respect to an estate tax return.

The principal task of the taxpayer's representative is to supply the information necessary to make the taxpayer's case. One is not limited to providing only what the examiner specifically requests, although ordinarily a taxpayer is wise not to volunteer information.

It is important to identify the principal focus of the examination, so that the estate's presentation of facts will address the issues of concern. If the examiner does not say why the return was selected for examination, one should inquire.

In general, the taxpayer's representative should organize the information in the way that best supports the inferences that the estate would like the examiner to draw. The goal is to influence how he or she understands and interprets the facts.

Ideally, the examiner will view the facts through the taxpayer's prism, essentially the taxpayer's theory of the case.

Sometimes the taxpayer's theory of the case may serve to distinguish unfavorable case law. Although an examiner cannot negotiate in regard to the Service view of the relevant law, the examiner may agree to reduce the amount of a possible adjustment, based on facts suggesting that unfavorable precedent is inapplicable or less applicable than may at first appear.

**Valuation Reports**

Often the examination is centered on possible flaws in the valuation report submitted to the Service as an attachment to the estate tax return. If so, the taxpayer's representative needs to understand the details of the valuation report and any potential criticism.

The authors of the report are a good resource. However, one should not rely heavily on their assistance, insofar as their written work product is discoverable if the case proceeds to litigation.

If the report relates to a major item and there is reason to think that the conclusion of the report is vulnerable to critique, the estate may want to seek the advice of another valuation analyst. In this event, the valuation analyst should be engaged through counsel, to take advantage of the attorney-client privilege.

Where the Service raises specific questions about the factual premises of the taxpayer's valuation report, the key to resolution at the examination level is to bolster the relevant facts. For example, the Service may question a valuation of corporate stock based largely on income projections, where the projections are burdened by generous compensation paid to owner-executives.

To find common ground with the estate tax attorney in this case requires development of the facts justifying the corporation's compensation policies.

At the very least, the taxpayer's representative's goal is to provide enough information to give the examiner confidence that he or she is able to analyze the valuation issues without expert assistance.

As a practical matter, referral to the Service valuation engineer or a private valuation analyst may limit further negotiation on value, unless the Service expert largely accepts the estate's valuation of the subject assets.

**Obstacles to Resolution in the Examination Process**

Unfortunately, some cases are not well suited to resolution at the examination level. In valuation matters, circumstances that significantly reduce the likelihood of resolution at the examination level include the following:

1. the decision of the examiner to seek expert input on valuation issues from the Service valuation engineer or an independent valuation analyst
2. the absence of contemporaneous expert valuation analysis to support the return (which tends to require, from the Service point of view, that they obtain a valuation report for purposes of the examination)

3. a dispute on a point of law that the examiner cannot circumvent

Once the estate tax attorney seeks a valuation opinion from the Service valuation engineer or an independent valuation analyst, the window of opportunity for negotiating on value at the examination level starts to close.

The opinion may take the form of a valuation report or a more limited valuation review (a critique of the taxpayer’s report, with suggested modifications). In either event, the estate tax attorney typically feels bound by this opinion.

Even if the estate tax attorney becomes convinced that the Service opinion is incorrect, he or she will likely suggest that the estate take its concerns to the appeals office.

If the taxpayer never obtained a valuation report on the subject asset, then the estate tax attorney is likely to seek expert assistance regardless of how much information the estate provides. Unless the estate is satisfied with the Service valuation, the estate will need to obtain an expert opinion as well, to support an appeal.

It is fruitless to argue points of law at the examination level if the Service has already established a position. The estate tax attorney does not have authority to modify legal positions asserted by the Service in rulings or other pronouncements.

Furthermore, the estate tax attorney adheres to positions the Service has asserted in litigation with other taxpayers. If a dispute turns on a significant question of law, therefore, typically the best way to proceed is through the appeals office.

Although the taxpayer may request a conference with the examiner’s group manager as a means to break an impasse, we have not found this procedure useful in valuation matters. The group manager operates under the same constraints as the examiner, and often the limited amount of time left on the statute of limitations inhibits the ability of the group manager to be much involved.

Furthermore, any assistance provided to the examiner may tend to strengthen his or her position. In rare instances, the group manager may raise additional issues, which typically would redound to the detriment of the taxpayer.

The transmittal to appeals is often when counsel takes over representation of the taxpayer, although we prefer to participate earlier, at least in an advisory role. This is a good moment to consider filing a Freedom of Information Act Request for the Service examination file, if no one has done so already.

**Appeals**

The Service appeals office provides an excellent process for settlement of estate tax valuation issues. Historically, taxpayers have fared well in appeals in all types of federal tax disputes.

According to data that the Service supplied to a Congressional commission in 1997, the average recovery rate for the Service in appeals over the five-year period fiscal 1992 through 1996, was only 29.97 percent.

The recovery rate is the additional tax and penalty sustained by the appeals office as a ratio of the additional tax and penalty proposed by the Service examiner. A recovery rate of 29.97 percent means that the appeals office rejected more than 70 percent of the additional tax and penalty proposed in the audit.

While these data include all cases in appeals, we have no reason to think that the results in estate and gift tax matters were significantly different. Possibly, the appeals office has become less accommodative since 1997, but our experience remains favorable.

The low recovery rate does not mean that taxpayers should always appeal proposed adjustments or that they can expect a large concession if they do so. On the contrary, one major reason for the low recovery rate in appeals is that taxpayers ply the most resources into the cases with merit, particularly instances where the examiner has made an error that results in additional tax. Recall that most tax adjustments are agreed at the examination level.

Only a small percentage of adjustments are ever considered in appeals. If appeals were to become
routine, the Service recovery rate would increase, perhaps dramatically.

Nonetheless, the appeals process is particularly important in estate tax valuation disputes, insofar as these disputes typically involve significant litigation hazards.

If a particular case involves significant litigation hazards, the appeals officer may offer a partial concession, even though the adjustment proposed by the examiner is reasonable and the examiner has not made any errors.

The potential downside of appeals is that all items are open to review. The appeals officer may raise new issues or may have additional insights that are unfavorable to the taxpayer’s case.

It is, therefore, possible for the appeals officer to increase the adjustments proposed by the examiner. However, a result of this nature is highly unusual—particularly in a valuation dispute.

**THE PROTEST**

If time permits, an examination with unagreed adjustments ordinarily ends with the issuance of a 30-day letter, the formal notice of the examiner’s findings. This notice gives the estate 30 days to file a formal protest initiating an appeal.

However, the time constraints in estate tax matters often compel the Service to issue a statutory notice of deficiency before the taxpayer has obtained a review in the appeals office.

If the estate files a petition in Tax Court, the Service counsel can refer the case back to the appeals office under Revenue Procedure 87-24. Although the estate would not necessarily have to file a formal protest under these circumstances (insofar as the estate has stated its claims in the petition), the estate nonetheless should submit a protest or other similar written statement to the appeals office, for the simple purpose of communication unburdened by the awkwardness of legal pleading.

The protest is an opportunity for the estate to make its strongest factual and legal arguments. Instructions for preparation of a protest are provided in IRS Publication 5 (Rev. 01-1999).

The protest begins with certain basic information, including the following:

1. the taxpayer’s name (the estate of the decedent)
2. contact information and taxpayer identification number (the decedent’s Social Security number)
3. the tax and period at issue (estate tax, with reference to the date of death)
4. a list of examination changes the taxpayer does not agree with
5. a request to confer with an appeals officer in person.

In addition, the protest sets forth a statement of the relevant facts and legal authorities. It is required that the protest be signed under penalty of perjury.

The Service appeals process is informal, as the regulations specifically provide. The rules of evidence do not apply. The appeals officer does not administer oaths, and does not take sworn testimony, although he or she may ask for factual statements in the form of an affidavit or otherwise under penalty of perjury.

The focal point of the process is the conference with the appeals officer. Although the queue in appeals is often long, estate tax matters receive relatively prompt attention, due to the inability to extend the statute of limitations.

The taxpayer’s representative may wish to supplement the protest before or after the conference. In a valuation case, submissions may include a second valuation report.

On legal issues, the taxpayer’s representative may submit detailed written arguments to the appeals officer in much the same way counsel would file a brief in litigation.

Unlike the estate tax attorney, the appeals officer is typically not a lawyer. Nonetheless, they are among the most capable individuals employed by the Service. They usually understand and respect a powerful legal argument when they hear one.

If the taxpayer’s representative wishes to argue the law in conference, he or she should provide a detailed written version of the argument in advance, either in the protest or in another submission. Copies of court decisions are typically helpful and appreciated.

**SETTLEMENT**

It is the mission of the appeals office to settle cases. Unlike examiners, an appeals officer analyzes and considers the hazards of litigation—that is, the possibility that the Service would not prevail, if the matter were to proceed to litigation. Hazards may exist in regard to both factual issues (the credibility of witnesses, the reasonableness of characterizations and inferences, the balance of equities) and
legal issues (precedent on either side, the force of the arguments).

If the appeals officer determines that the hazards are equally balanced and that the taxpayer is as likely to prevail as the Service, then he or she should agree to split the difference.

As a general rule, valuation cases should not go beyond the appeals office. The appeals officer has all the tools necessary to settle. Nothing about the ritual combat of litigation is likely to enhance anyone's understanding of the relevant facts.

Tax Court judges have expressed the view that valuation disputes should never reach their desks. In the event the taxpayer files a petition in Tax Court but the matter has not received consideration in the appeals office (e.g., because the taxpayer never filed a protest or the Service had to issue a statutory notice of deficiency to avoid expiration of the limitations period), Service counsel ordinarily refers the case to the appeals office for settlement consideration under Revenue Procedure 87-24.

Because appeals officers take litigation hazards into account, they are not bound by the conclusions of the Service valuation engineer or other consultants. Furthermore, they should have no emotional investment in the case.

An important advantage of a settlement in appeals is privacy. In litigation, by contrast, a great deal of otherwise private information goes public, although the Rules of the Tax Court have been modernized to maintain privacy of taxpayer identification numbers and other similar information.

If the taxpayer has difficulty finding common ground with the appeals officer, then mediation is a possibility, if both sides are willing. However, the time constraints in estate tax matters are typically a major obstacle to mediation, when the estate already has exhausted part of the calendar in negotiation with the appeals officer.

As remarked earlier, the limitations period for assessment of estate tax cannot be extended. The Service is likely to decline mediation, if the expiration of the limitations period is fast approaching.

On rare occasions, settlement in appeals is impossible, because the case involves an issue that the Service has designated for litigation. In these circumstances, the estate may want to avoid Tax Court, considering that the Service may have several other cases on the same issue underway and may have made use of this opportunity to promote its views on the issue in question.

To litigate outside the Tax Court, the estate would need to pay the tax and seek a refund in U.S. District Court or the Court of Federal Claims.

An appeal defers payment of a deficiency but does not stop the accrual of interest. The choice of forum for litigation is not foreclosed. An appeal also opens the possibility of seeking attorney fees in the event the case is eventually litigated. One of the criteria for an award of attorney fees is that the taxpayer exhausted administrative remedies.

The Appeals Conference

The tenor of the conference depends on the preferences of the appeals officer. Generally, the conference provides an opportunity to respond to objections that have not been adequately addressed in writing. Shortly before the conference, the taxpayer's representative should ask the appeals officer which issues in the case are the major concerns.

The examiner typically prepares a rebuttal to the protest. The taxpayer's representative should ask the appeals officer for a copy of the rebuttal in advance of the conference.

In a large valuation case, one should not expect to settle during the conference. If the two sides are not far apart, settlement may be expected within weeks. If the gap is substantial, then further steps can be agreed upon to address the concerns of the appeals officer. This process may go on for several months and may include a second conference.

Ordinarily, we do not bring the taxpayer to the appeals conference, in any type of case. We view the personal representative of an estate in the same light. The only reason for the taxpayer to attend the appeals conference is to provide informal oral testimony. But testimony is usually unnecessary, if one has been diligent in providing information in documentary form. The presence of the taxpayer is particularly unuseful in valuation cases, which typically turn on the relative merits of valuation analyses prepared by competing experts.

Furthermore, the presence of the taxpayer may tend to unsettle the proceedings, either by restraining the candor of the conversation or by obliging the representative to discuss peripheral issues. Whenever the taxpayer speaks, he or she may inadvertently make a damaging admission.

We also generally prefer not to bring a valuation analyst. The presence of a valuation analyst may impair one's ability to control the taxpayer's side of the discussion, insofar as the analysts are independent experts and have their own professional imperatives.

Worse yet, the analyst's attendance effectively gives the Service an opportunity to conduct cross-examination, which may reveal the analyst's possible weaknesses as a witness.
“If a particular valuation analyst has done work in the past for the Service, for example, then the potential weight of his or her opinion is much greater, in the view of Service personnel.”

If the gap between respective settlement positions remains wide in appeals, even after substantial efforts to bridge the gap, either the estate or the appeals officer may have taken an unrealistic position.

If the estate’s position is more reflective of client demands than dispassionate analysis, then possibly the client is the one who could benefit from a dose of reality.

One way to gauge the realistic outlook for the estate’s case is to obtain a new valuation report from a reputable valuation analyst. The credibility of the valuation analyst is important. If a particular valuation analyst has done work in the past for the Service, for example, then the potential weight of his or her opinion is much greater, in the view of Service personnel.

The estate may or may not wish to share the results of the second report with the appeals officer. However, the estate will likely wish to do so if the report is favorable to the taxpayer and the valuation analyst’s opinion is apt to carry considerable weight with the Service.

As mentioned earlier, legal counsel should handle the engagement of the valuation analyst, so as to take advantage of the attorney-client privilege. It is usually wise to avoid any disclosure to the new valuation analyst about the results of earlier valuations or the positions asserted by the taxpayer in appeals. Often, the valuation analyst will insist that no one disclose any information that could create the appearance of bias.

**Litigation**

Litigation is not a particularly good way to resolve estate tax valuation disputes. The problem is that the value of the subject asset is always a matter of opinion.

When a judge issues a decision establishing the value of the subject asset, the decision is essentially a valuation report, not inherently better than the valuation reports prepared by others and sometimes patently flawed. If the decision is unfavorable to the taxpayer, then he or she is apt to view the result as arbitrary or worse.

It is not clear how much taxpayers have to gain in litigation with the Service. According to data from the period 1992 through 1996, the Service recovery rate in docketed cases was only 23.83 percent. But taxpayers fared almost as well in appeals, during the same period. The marginal benefit to the taxpayer in litigation may or may not have been worth the cost for most taxpayers.

Furthermore, taxpayers may not have achieved any marginal benefit in valuation cases, depending on how closely the results in valuation cases followed the broad average.

Litigation involves a significantly greater level of risk than the appeals process. In valuation cases, the Tax Court sometimes threatens to adopt one party’s expert opinions and produce “a significant financial defeat for one or the other” rather than “a middle-of-the-road compromise which we suspect each of the parties expects the Court to reach.”

The point of these remarks is to encourage settlement in later cases. But the risk is real in any event.

**The Choice of Forum**

As we believe most estate tax valuation cases should settle in the appeals office if not before, this discussion is limited to issues affecting choice of forum and the commencement of a lawsuit. In particular, this discussion does not include procedures and tactics related to the use of expert witnesses.

The litigation process begins with the statutory notice of deficiency, also known as a 90-day letter. The deficiency is the amount of additional tax the Service seeks to assess. If the estate wishes to challenge the deficiency, the deadline for filing a petition in Tax Court is 90 days from the date of the notice.

The timeliness of the petition is determined by reference to the date of mailing. Traditionally, a taxpayer established timeliness with certified mail through the U.S. Postal Service. However, some private companies are now able to provide adequate evidence of mailing as well.

If the estate does not file a petition within 90 days, the Service will assess the tax asserted in the 90-day letter. The only way to challenge the deficiency at this point is to pay the tax (with penalties, if any, and interest) and seek a refund.

If the Service rejects the refund claim or does not respond within six months, the estate may file a refund suit in U.S. District Court or the Court of Federal Claims.

Most taxpayers prefer to litigate in Tax Court to avoid the pre-payment requirement. Consequently,
a large majority of federal tax cases are filed in Tax Court rather than in U.S. District Court or the Court of Federal Claims.

An important distinction between the available forums is the level of tax expertise. The level of tax expertise is highest in Tax Court, which is devoted exclusively to federal tax cases.

In contrast, District Court judges rarely adjudicate federal tax disputes and may have little or no experience with tax issues. The Court of Federal Claims is the middle ground, where the judges deal with tax matters on a regular basis but do not necessarily develop the level of expertise prevalent in Tax Court.

Practitioners may differ over whether an expert forum is beneficial in a valuation case. It is presumably helpful that the judge is already acquainted with basic valuation concepts. But a judge who has already presided over numerous valuation cases in the past may have developed prejudices that are difficult to discern or address.

For example, a judge who has adjudicated the value of numerous closely held businesses is already aware of the various studies attempting to quantify the discount for lack of marketability and already knows what he or she thinks of their relative merits.

If the taxpayer in a particular case wants the studies to get a fresh look because the discount for lack of marketability is a major item of dispute, the taxpayer might prefer to file a refund suit in U.S. District Court, assuming the pre-payment of the tax is manageable.

If the taxpayer intends to settle the case but believes the Service has taken an unreasonable position, the expertise of the Tax Court may serve the taxpayer's interests.

Judges with the most experience in valuation matters are usually among the most skeptical about the usefulness of trials to resolve a dispute of this nature. Accordingly, the Tax Court judge may make the greatest effort to press the parties for settlement.

Conflicting precedents are usually not a major factor in the choice of forum for a valuation case. The Tax Court considers itself bound to apply the law of the U.S. Court of Appeals that would hear the appeal, if any.\(^{21}\) Other federal courts follow a similar practice. As a result, the controlling law in Tax Court and U.S. District Court is ordinarily the same.

The decisions of the Court of Federal Claims are appealable to the Federal Circuit Court of Appeals. However, the Federal Circuit has not produced a great deal of precedent on valuation issues. A possible reason to file in the Court of Federal Claims is to avoid unfavorable precedent elsewhere.

As a petitioner in Tax Court, the taxpayer has the right to request conduct of the trial in a particular place and under Rule 140(a),\(^{22}\) the Tax Court will “make reasonable efforts to conduct the trial at the location most convenient to that requested where suitable facilities are available.” In the Court of Federal Claims, trial may take place in Washington, D.C., or elsewhere, as the judge may determine.

The proceedings of any U.S. District Court are conducted in its permanent facilities. A jury trial is possible only in U.S. District Court. In Tax Court, the Service is represented by its own lawyers. But, the Tax Division of the Justice Department represents the government in other forums.

The rules of procedure followed in each of the available forums are similar in many respects. Although the Tax Court\(^{23}\) and the Court of Federal Claims\(^{24}\) each have their own set of rules, the rules are based on the Federal Rules of Civil Procedure.

In federal tax litigation, the taxpayer generally bears the burden of proof, with certain exceptions.\(^{25}\) However, the criteria for shifting the burden of proof to the Service are now statutory.\(^{26}\)

Each of the available forums follows the Federal Rules of Evidence.

In Tax Court, the parties are required to stipulate to the facts to the fullest extent possible.\(^{27}\)

The practical import of this rule in valuation cases is that the trial is devoted almost entirely to expert opinion. Unlike the practice in other courts, trial briefs in Tax Court are filed after the conclusion of the trial.\(^{28}\)
CONCLUSION

The objective of the taxpayer's legal representative in an estate tax valuation dispute is to resolve the matter on favorable terms without resorting to litigation.

In most cases, this objective is achievable, either at the examination level or in the appeals office. This objective is particularly achievable if the estate takes a reasonable position and diligently presents its case.

The examiners and the appeals officers who deal with estate tax valuation disputes are capable and committed to finding a reasonable resolution. Appeals officers have authority to settle cases based on factors that may influence the outcome of a trial. If a case proceeds to litigation, both the costs and the risk of financial defeat increase substantially.

Notes:

1. Internal Revenue Service Data Book, 2009, Table 9a.
2. Ibid.
3. Ibid.
4. Ibid., Table 10.
8. According to IRS Statistics of Income, estates of 1999 decedents filed 4,689 estate tax returns in the over $5 million category; and the aggregate amount of these estates was less than $68 billion, while estates of 2008 decedents filed 9,169 estate tax returns in the over $5 million category, and the aggregate amount of these estates was more than $145 billion. http://www.irs.gov/taxstats/indtaxstats/article/0,,id=210646,00.html.
11. IRC Section 7123(b) provides for certain alternative dispute resolution procedures. Mediation, as described in Rev. Proc. 2009-44, 2009-40 I.R.B. 462, is generally available for legal or factual issues that have gone through Appeals but have not been settled, if both the taxpayer and the IRS agree to participate. Fast Track Mediation, as described in Rev. Proc. 2003-41, 2003-1 C.B. 1047, is a pre-Appeals process, available by mutual agreement in matters under jurisdiction of the IRS Small Business/Self-Employed Compliance Division. Numerous exceptions apply, including an exception for any issue for which resolution will require consideration of litigation hazards. Arbitration, as described in Rev. Proc. 2006-44, 2006-2 C.B. 800, is available by written agreement to resolve specific factual issues in Appeals.
15. Treas. Reg. Section 601.106(c) (“Proceedings before Appeals are informal.”)
16. See, e.g., Buffalo Tool & Die Mfg. Co. v. Commissioner, 74 T.C. 441, 452 (1980) (“We are convinced that the valuation issue is capable of resolution by the parties themselves through an agreement which will reflect a compromise Solomon-like adjustment, thereby saving the expenditure of time, effort, and money by the parties and the Court—a process not likely to produce a better result.”)
18. See Note 16.
23. See Note 22.
25. See, e.g., TCR 142.
26. IRC § 7491.
27. TCR 91.
28. TCR 151.

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