

Revenue Ruling 93–12

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ISSUE

If a donor transfers shares in a corporation to each of the donor's children, is the factor of corporate control in the family to be considered in valuing each transferred interest, for purposes of section 2512 of the Internal Revenue Code?

FACTS

P owned all of the single outstanding class of stock of *X* corporation. *P* transferred all of *P*'s shares by making simultaneous gifts of 20 percent of the shares to each of *P*'s five children, *A*, *B*, *C*, *D*, and *E*.

LAW AND ANALYSIS

Section 2512(a) of the Code provides that the value of the property at the date of the gift shall be considered the amount of the gift.

Section 25.2512–1 of the Gift Tax Regulations provides that, if a gift is made in property, its value at the date of the gift shall be considered the amount of the gift. The value of the 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 to sell, and both having reasonable knowledge of relevant facts.

Section 25.2512–2(a) of the regulations provides that the value of stocks and bonds is the fair market value per share or bond on the date of the gift. Section 25.2512–2(f) provides that the degree of control of the business represented by the block of stock to be valued is among the factors to be considered in valuing stock where there are no sales prices or bona fide bid or asked prices.

Rev. Rul. 81–253, 1981–1 C.B. 187, holds that, ordinarily, no minority shareholder discount is allowed with respect to transfers of shares of stock between family members if, based upon a composite of the family members' interest at the time of the transfer, control (either majority voting control or de facto control through family relationships) of the corporation exists in the family unit. The ruling also states that the Service will not follow the decision of the Fifth Circuit in *Estate of Bright v. United States*, 658 F.2d 999 (5th Cir. 1981).

In *Bright*, the decedent's undivided community property interest in shares of stock, together with the corresponding undivided community property interest of the decedent's surviving spouse, constituted a control block of 55 percent of the shares of a corporation. The court held that, because the community-held shares were subject to a right of partition, the decedent's own interest was equivalent to 27.5 percent of the outstanding shares and, therefore, should be valued as a minority interest, even though the shares were to be held by the decedent's surviving spouse as trustee of a testamentary trust. See also, *Propstra v United States*, 680 F.2d 1248 (9th Cir. 1982). In addition, *Estate of Andrews v Commissioner*, 79 T.C. 938 (1982), and *Estate of Lee v Commissioner*, 69 T.C. 860 (1978), *nonacq.*, 1980–2 C.B. 2, held that the corporation shares owned by other family members cannot be attributed to an individual family member for determining whether the individual family member's share should be valued as the controlling interest of the corporation.

After further consideration of the position taken in Rev. Rul. 81–253, and in light of the cases noted above, the Service has concluded that, in the case of a corporation with a single class of stock,

notwithstanding the family relationship of the donor, the donee, and other shareholders, the shares of other family members will not be aggregated with the transferred shares to determine whether the transferred shares should be valued as part of a controlling interest.

In the present case, the minority interests transferred to *A, B, C, D,* and *E* should be valued for gift tax purposes without regard to the family relationship of the parties.

HOLDING

If a donor transfers shares in a corporation to each of the donor's children, the factor of corporate control in the family is not considered in valuing each transferred interest for purposes of section a2512 of the Code. For estate and gift tax valuation purposes, the Service will follow *Bright, Propstra, Andrews,* and *Lee* in not assuming that all voting power held by family members may be aggregated for purposes of determining whether the transferred shares should be valued as part of a controlling interest. Consequently, a minority discount will not be disallowed solely because a transferred interest, when aggregated with interest held by family members, would be a part of a controlling interest. This would be the case whether the donor held 100 percent or some lesser percentage of the stock immediately before the gift.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 81-253 is revoked. Acquiescence in issue one of *Lee*, 1980 2 C.B. 2.

SOURCE: Rev. Rul. 93-12, 1993-1, C.B. 202.