

CERTIORARI IN JELKE DENIED: SIMPLICITY IN VALUATION

By

Jim Roberts
Glast, Phillips & Murray, P.C.
Dallas, Texas

In the [February 2008 edition of eReport](#), we reported on the Eleventh Circuit's decision in *Jelke*¹ which purports to lay down a simple rule for valuations experts, and others, to deal with the potential tax liability for built in gains in C corporations. Basically, the Eleventh Circuit said that investment companies, operated as C corporations, will be evaluated as though they were liquidated on the date of death, triggering the recognition of tax liability for the gains built into the assets of the corporation. And as a result, the value of the corporation will be reduced dollar for dollar by that tax liability.

The government disagreed with that decision and applied for writ of certiorari to the United State Supreme Court. On October 6, 2008, the Supreme Court denied the government's application for writ, letting the Eleventh Circuit's decision stand.

At issue in the case was the extent to which built-in capital gain tax liability should be taken into account in determining the date of death value of a C corporation with assets which, if liquidated, would produce a gain, and, as a result, tax on that gain. As noted in the February article on the case, the Court provided an easy to read, short history of valuation of investment companies. Ultimately, the Court concluded that valuation of such corporation should assume that such corporations will always be liquidated on the date of death, and the tax liability paid, thus requiring a reduction of value by 100% of the tax attributable to the built-in capital gain. The net result is an easy to understand method of valuation, similar to that mandated by the Fifth Circuit in *Dunn*².

¹ *Estate of Frazier Jelke, III, Deceased v. Commissioner*, 507 F.3d 1317, U.S. App. LEXIS 26477, 2007-2 U.S. Tax Cas. (CCH) P60,552; 100 A.F.T.R.2d (RIA) 6694; 21 Fla. L. Weekly Fed. C 188 (11th Cir. 2007)

² *Estate of Dunn v. Commissioner*, 301 F.3d 339 (5th Cir. 2002)