DISCOUNT FOR MINORITY INTEREST

A minority interest ownership in an entity (i.e. less than 50% ownership) is often worth less on a proportionate basis than a controlling interest (i.e. ownership of more than 50%). This is for reasons including, but not limited to the fact that a minority interest discount reflects the minority shareholder's inability to compel either the payment of dividends or liquidation in order to realize a pro rata share of the entity's net earnings or asset value. Discounts for a minority interest (lack of control discount) and for lack of marketability (DLOM) are conceptually distinct and the appropriate percentage rate of each of them is a question of fact. Furman v Commissioner of Internal Revenue, T.C. Memo 1998-157 (1998). The Court noted in Furman that a minority interest in a corporation that does not pay dividends and whose stock does not have a ready market is of limited value. In Gallagher v Commissioner of Internal Revenue, T.C. Memo 2011-148 (2011) the Tax Court pointed out as a preliminary matter that there is a "discernible difference" between a minority discount and a DLOM. In Gallagher, the Court wrote:

> "The minority shareholder discount is designed to reflect the decreased value of shares that do not convey control of a closely held corporation. The lack of marketability discount, on the other hand, is designed to reflect the fact that there is no ready market for shares in a closely held corporation. . . ."

The concept of a minority discount is that a non-controlling interest in an entity is worth less than a controlling interest. The reason for this disparity is that a controlling interest carries with it the benefits of control. These benefits include the right to select officers and employees of the entity, the right to set prices and policies, the right to determine payouts of earnings and profits, the right to conduct day to day affairs, and the initiation of a sale or liquidation of the entity. The Court also points out in Gallagher that the minority discount should be applied first, followed by the marketability discount.