

The Case of The Right Deduction



Client's Situation

About five days before the deadline to file his annual tax return, a client and his accountant called us to assist in what they thought would be an easy problem to solve. After all, in November, 1997, the client (the sole owner of all 600 outstanding common shares of the subject company) had entered first into a Letter of Intent, then Definitive Agreements to sell his company for \$95.0 million. The transaction was to close March 1, 1998.

A stock transaction, the buyer and seller had (appropriately) agreed to a “collar” on the deal. That is, if the stock to be exchanged by buyer traded at an average price at less than \$21 per share or more than \$29 per share for a twenty-day period prior to closing, either buyer or seller could terminate the transaction. At the date of close, the price of the shares was \$18 per share and “out of the money”. Both parties wanted to (and did) terminate the transaction.

The seller, feeling the chances of closing were almost certain, made a 1997 year end gift to a charitable foundation of 2 shares of stock. He and his accountant now needed an appraisal to support and confirm the charitable deduction in Form 1040 to be filed in five days. The accountant and his client thought that the pro-rata share of the failed transaction would be the correct value.

ABA Solution

With client agreement, ABA quickly provided a scope-restricted opinion to file with the tax return. More important, ABA applied appropriate appraisal technique and considered the non-marketable minority interest that was, indeed, the true gift. ABA also applied the fair market value standard (hypothetical buyer; hypothetical seller) rather than the investment value standard (a specific buyer acquiring the company for synergistic and strategic reasons) to the subject equity interest. While the deduction was not as great as the client and his accountant first thought, the deduction was correct and supported by a qualified appraisal opinion completed within a tight timeframe. Both the accountant and his client appreciated the guidance, and the professional and timely service.