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**CITATION:**

Kevin B. Kimberlin and Joni R. Steele v. Commissioner, 128 T.C. No. 13, May 8, 2007

**SUMMARY:**

The Tax Court concluded that warrants had an ascertainable fair market value in 1995 and were taxable in that year.

**DETAILS:**

Warrants were issued to the taxpayers as part of settlement and release agreement in 1995. The IRS argued that these were taxable in 1997, the year of exercise. The taxpayers argued that the warrants had a readily ascertainable value in 1995 and were taxable in that year.

The Tax Court said the following about the IRS expert who argued the value could not be readily ascertainable in 1995:

He was not credible. Once the Court qualified him as an expert, the performance of respondent's expert, a former ski instructor, went downhill fast. He inaccurately stated his credentials, repeatedly contradicted himself, inappropriately relied on a colleague not disclosed in his report, and insisted that multiple errors in his report were the fault of his "editor". His lack of analytical rigor is exemplified by the fact that he did not realize, until cross-examination, that the entirety of the supporting text he relied on in the fourth edition of a particular textbook had been deleted from the sixth and current edition. Indeed, he conceded that two of the textbooks upon which he relied were 6 years old and two editions out of date....

When the Court later questioned whether he was “trying to determine fair market value”, respondent’s expert stated that fair market value could not be determined, as a certified financial analyst he was obligated to follow a “higher standard”, and he attempted to determine the “intrinsic value” of the warrants. In sum, we find respondent’s expert’s report and testimony of no value.

The taxpayer expert was founder of an economic consulting company and the Court found him to be “credible, consistent, and highly qualified” and he applied “prudent valuation techniques (i.e., focusing on venture capitalist benchmark rates of return)…”

The Court concluded that the warrants should have been valued at the time of their receipt in 1995.

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