Tom Keith & Associates, Inc.
BUSINESS & REAL ESTATE APPRAISERS

121 S. Cool Spring Street
Fayetteville, NC 28301
(910) 323-3222
Fax (910) 323-1180
www.keithvaluation.com
email: info@keithvaluation.com

Tom J. Keith, MAI, CBA, ASA

Fred R. Keith, LLD 1900 – 1988

Amanda L. Nimocks, Office Manager
Thomas W. Bell, MBA
J. Carr Gibson
Jim C. Bullard
R. Cecil Carlyle
Aaron C. Locklear
David W. Duke, DMA
Brandon T. Wills
Yolanda D. Wells

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CITATION:
Estate of Jelke et al v. Commissioner, 05-15549, US Court of Appeals for the 11th Circuit, November 15, 2007

SUMMARY:
The Eleventh Circuit overturned the Tax Court and allowed the estate a dollar-for-dollar reduction in fair market value for the hypothetical tax on trapped-in gains for a "C" corporation minority shareholder.

DETAILS:
Decedent owned 6.44% of the common stock of Commercial Chemical Company (CCC), a "C" Corporation. CCC is a holding company whose primary asset was securities. The market values of these securities exceeded the underlying tax bases by $51 million. Based on the historical portfolio turnover, the Tax Court had assumed the tax on trapped-in gains would be paid over 16 years, and applied a present value calculation to the tax.

The Eleventh Circuit reviewed all of the prior trapped-in gains cases in the various Circuits. It also cited an article by a Financial Consulting Group member in *The Montana Lawyer* that had been previously cited by the Second Circuit in *Eisenberg*. The Court discussed the lack of any plan to liquidate CCC and the inability of a minority shareholder to force a liquidation, but found those factors unpersuasive.

The Court noted: "The rationale of the Fifth Circuit in the *Estate of Dunn* eliminates the crystal ball and the coin flip and provides certainty and finality to valuation as best it can, already a vague and shadowy undertaking. It is a welcome road map for those in the judiciary, not formally trained in the art of valuation. The *Estate of Dunn* dollar-for-dollar approach also bypasses the unnecessary expenditure of judicial resources being used to wade through a myriad of divergent expert witness testimony, based upon subjective conjecture, and divergent opinions. The *Estate of Dunn* has the virtue of simplicity and its methodology provides a practical and theoretically sound foundation as to how to address the discount issue… This 100% approach settles the issue as a matter of law, and provides certainty that is typically missing in the valuation arena. We thereby follow the rationale of the Fifth Circuit in the *Estate of Dunn*, that allows a dollar-for-dollar, $51 million discount for contingent capital gains taxes…"

One judge dissented, noting, "The tax code is nowhere near the center of my intellectual life, and generally I find estate tax law about as exciting as Hegel's metaphysical theory of the identity of opposites." He found the *Dunn* approach to be overly simplistic and cited Teddy Roosevelt and Henry James as well as various cases in dissenting "from the majority's perilous delusion."

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Fax 910-323-1180
www.keithvaluation.com