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Valuing a Complex Legacy: Lessons in Valuation From *Estate of Jackson*

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ON VALUING A LEGACY AND THE KING OF POP

Michael Jackson and Samuel Taylor Coleridge are not so different in the end. Both wrote lyrics that will resonate for generations; both achieved critical acclaim before the age of 30; both had ''gentle'' and ''nervous'' dispositions; both led rather eccentric lives and died before their race had run;[1] and both left valuable legacies in their wake. Coleridge and his ilk — the Romantic poets, like Keats, Wordsworth, Blake, and Shelly — wrote innumerable verses about the ephemerality of life, yet, in a master stroke of cosmic irony,[2] their legacy lives on to this day like an image painted on a Grecian urn.[3] Similarly, the King of Pop's legacy will remain indefinitely.

While the Romantics were composing odes to nightingales, rhymes about ancient mariners, and pastorals on wandering lonely as a cloud, England was imposing a duty on ''legacies'' as it had done in one way or another, since the Stamp Tax of 1694.[4] Because the duty tax on legacies was imposed only on a decedent's physical property, no tax would have been levied on Coleridge's royalties from *Kubla Khan*.[5] The United States, at present, has no such moral or fiscal compunction regarding the taxation of a person's ''legacy,'' physical or otherwise.

The IRS's method of choice when collecting on one's legacy is, of course, the federal estate and gift tax. Estates must contain over $11.7 million (in 2021) to be subject to the estate tax,[6] and it is rarely the case that such estates have one or two readily valued assets. Thus, if an estate tax valuation case meanders its way through the morass of deficiency procedures to the Tax Court, invariably the estate will be fraught with complexity.

Balancing the scales of valuation tends to be more of an art than science, and one of the most artful cases regarding estate tax valuations was published on May 3, 2021, when the Tax Court issued the much-anticipated opinion of *Estate of Jackson v. Commis-*

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[1] Jackson at 50 and Coleridge at 61. Jackson and Coleridge, most similarly, were long-term opiate and sedative addicts, and their ultimate deaths resulted from drugs prescribed to them for their ''nervous conditions.'' Coleridge died from complications of prolonged use of laudanum (opium dissolved in brandy), and Jackson died from an overdose of propofol and benzodiazepine.

[2] *Compare* Alanis Morrissette and Glen Ballard, ''Ironic,'' *Jagged Little Pill* (Maverick-Warner Brothers 1995), *with* Søren Kierkegaard, *On the Concept of Irony with Continual References to Socrates* (1841).

[3] *See* John Keats, ''Ode to a Grecian Urn'' (1819).

[4] Stephen Dowell, *A History of Taxation and Taxes in England,* 139 (1884).

[5] Stephen Dowell, *A History of Taxation and Taxes in England,* 139 (1884). *Kubla Khan* was written (Coleridge himself admitted) under the *heavy* influence of laudanum in 1797 and published in 1816. *Kubla Khan* is, unquestionably, the 19th century version of the Beatles *Lucy in the Sky with Diamonds* or the entire acid-induced catalog of Grateful Dead songs, which is to say, *Kubla Khan* is the 19th century equivalent of ''a long, strange trip.''

[6] *See* §2010. All section references herein are to the Internal Revenue Code of 1986, as amended (the ''Code''), or the Treasury regulations promulgated thereunder, unless otherwise indicated.

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sioner.[7] Authored by the inestimable Senior Judge Mark V. Holmes, this 271-page leviathan was certainly worth the hours that buttoned-up tax attorneys spent loitering around the water cooler, speculating about the outcome of the case, all the while visibly struggling to incorporate one or more of Jackson's song titles as puns in casual conversation.[8] Holmes' opinion in *Estate of Jackson* delivered in spades.

At issue in *Estate of Jackson* was one of the largest personal deficiencies in the history of the Tax Court — over $1 billion — with nearly $200 million in accuracy related and gross valuation misstatement penalties tacked on for good measure, like a tail on the donkey of an IRS largesse.[9] The resulting liability, after accounting for the Estate's prior payments, was just over $500 million.[10] To put this deficiency in context, had the full liability been collected, it would have been nearly enough to finance the entire operating budget of the investigations arm of the IRS in 2013, when the case was filed.[11] For further context, the deficiency is approximately $50 million above the gross domestic product of the Pacific island nation of Tonga in the same year.[12]

If one peels away the layers of the valuation onion, at its core, the IRS's deficiency hinges on three contested assets: (i) Jackson's image and likeness; (ii) his interest in a music publishing company (Sony/ATV), and (iii) his interest in a catalog of music comprised of recordings by many artists including the Beatles and Jackson himself (Mijac Music). The estate valued Jackson's image and likeness at $4 million, while the IRS valued it at $161 million.[13] The estate claimed that Jackson's interest in Sony/ATV had no value, while the IRS valued it at $206 million.[14] Finally, the estate valued Mijac Music at $2 million, while the IRS valued the estate's interest at $114 million.[15] Despite the nuances of the assets, the dueling experts, and the sheer length of the opinion, *Estate of Jackson* ultimately circles around a proverbial Charybdis of valuation,[16] at the center of which sits the Tax Court.

Mired in the depths of the valuation vortex is the issue of hindsight. Because property is valued precisely *at the moment of death,*[17] it is inappropriate, as a general matter, to assign a value to property based upon post-death evidence. As the compulsion to use similes was to Wordsworth, so too is the ''temptation'' to use hindsight in estate valuations ''usually too great'' for both the estate and the IRS.

In this article, we will consider the post-death valuation of a complex estate, using *Estate of Jackson* like a jeweler might use a loupe to examine the intricacies of a precious gem — which is, after all, the sum and substance of Judge Holmes' *magnum opus*. We will first look at the principles of fair market value and the genesis of the ''willing buyer and willing seller'' test, which forms the bedrock of estate valuation. We will then examine experts and their opinions, with special attention paid to Weston Anson, the IRS's handpicked expert in *Estate of Jackson*, who, as we will see, is a particularly strong example of how *never* to conduct oneself when serving as an expert witness.[18] Finally, we will turn to a case study of the valuation of a particularly unique asset: Michael Jackson's posthumous ''image and likeness.''

ON HYPOTHETICALS AND PRESUMPTIONS

In his treatise on economics, Carl Menger observed that ''[t]he measure of value is entirely subjective in nature, and for this reason a good can have great value to one economizing individual, little value to another, and no value at all to a third, depending upon the differences in their requirements and available

[7] T.C. Memo 2021-48.

[8] ''Off the Wall,'' ''Thriller,'' ''Victory,'' ''Bad,'' ''This is It,'' and ''Dangerous'' were likely the frontrunners.

[9] §6662(b) (accuracy-related); §6662(h)(2)(C) (gross valuation misstatement).

[10] All values in this article are neatly rounded, approximate numbers.

[11] Such budget was a mere $644 million in 2013. *See* IRS, FY 2013 Budget in Brief.

[12] The World Bank, Tonga. It bears noting that the operating budget for one appendage of the IRS's Shiva-like administrative body is tantamount to the GDP for an entire nation. While this topic is well outside the purview of this article, it is *rather* enlightening (or deeply horrifying, depending on which side of the aisle you find yourself).

[13] These are the figures argued in the parties' briefs to the Tax Court. However, the initial valuation by the estate was a mere $2,100, while the notice of deficiency valued Jackson's image and likeness at $434 million.

[14] The estate remained firm in its brief of its initial zero valuation, while the notice of deficiency valued the Sony/ATV interest at $469 million.

[15] The estate budged a bit between its initial valuation and trial (approximately $60,000). In contrast, the IRS valued the estate's interest in Mijac Music at $61 million, meaning that the amount argued in the IRS's brief was a skosh over $53 million *more* than in the notice of deficiency.

[16] According to classical authors, Charybdis (an anthropomorphized whirlpool) and Scylla (a frightful cliff-dwelling monster with six sailor-grabbing heads) were twin perils, who challenged any Greek sailors who daring to pass through the Strait of Messina. They are the ancient version of ''a rock and a hard place'' and are often credited as the origin of this turn of phrase.

[17] Or at the I.R.C.'s alternative valuation date, generally within six months after the date of death. *See* §2032(a).

[18] Perjury, to the surprise of no one — *except maybe Anson* — is traditionally frowned upon by the Tax Court.

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amounts.''[19] Understanding well that the IRS appreciates gray areas in the law about as much as they appreciate being forced to change from their trusty old Swingline stapler to a Bostich, the I.R.C, and the Treasury regulations neatly define the concept of ''value.'' Nonetheless, the Tax Court's practical application of the I.R.C. and Treasury regulations necessarily injects a modicum of gray into the valuation equation, much to the collective chagrin of the IRS.

Value, specifically fair market value (FMV), has long been defined as ''the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.''[20] The test is ''nearly as old as the federal income, estate, and gift taxes themselves.''[21] Gift taxes are based on the FMV of the gift at the time of transfer, and generation-skipping transfer taxes are valued either (a) at the date of transfer (if the transfer occurred before the decedent began pushing daisies), or (b) at death, if the transferred property is included in the decedent's gross estate.[22] For estate tax purposes, valuation is performed as of the taxpayer's date of death,[23] unless the estate has made an election to use an alternate valuation date.[24]

The decedent's gross estate includes ''all property, real or personal, tangible or intangible, wherever situated,'' owned by the decedent at the time of his demise.[25] Whether property was ''owned'' by a decedent when he passed on is governed by thirteen specific inclusionary rules, contained in §2033 through §2045, and one exclusionary rule related to disclaimers, contained in §2046.[26] These rules often require an examination of the facts and circumstances surrounding the interests or transfers.

Although the regulations do not contain the terms ''*hypothetical* willing buyer'' or ''*hypothetical* willing seller,''[27] the courts have added the italicized term as a judicial ''gloss'' to the definition of FMV.[28] In philosophy and in mathematics, hypotheticals (hypotheses) are the foundation of theories, which, only after having been proved, may become laws. Thus, the gray threads of uncertainty are woven into the very fabric of valuation.

As the Tax Court illustrated in *Estate of Jackson*, valuations need not be incontrovertible to be accepted. Instead, they need only to be defensible and persuasive, which is to say supported by a latticework of experts and evidence. Case law may assist in determining methodology; however, given that no two ''unique'' assets will, by definition, ever be identical, the Tax Court recognizes that its precedent is largely worthless when applied to a valuation in a subsequent case.[29]

Because willing buyers and willing sellers are creatures of a fictional realm (*rather like tax centaurs in this respect*), it follows that a hypothetical sale of an asset is simply a figment of the Tax Court's imagination. This ''sale'' is but one more link in the chain of legal fictions, which all lawyers must simply acknowledge and accept, like a ''fertile octogenarian'' or an ''unborn widow.''[30] Nevertheless, even the Tax Court has its limits on procrastinated disbelief.

Willing buyers are representative of a *class* of buyers, not a ''particular possible purchaser based on imaginary scenarios.''[31] Thus, even if your best friend, imaginary or otherwise, would have overpaid for your rare baseball card collection out of love and

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[19] Carl Menger, *Grundsätze der Volkswirtschaftslehre (Principles of Economics)* (1871).

[20] Reg. §20.2031-1(b).

[21] *United States v. Cartwright*, 411 U.S. 546, 551 (1973) (citing Reg. 63 (relating to estate tax Under the Revenue Act of 1921), Art. 13 (1922 ed.); *see also* Reg. 105 (Relating to the estate tax under the I.R.C. (of 1939)), §81.10 (1942). Valuation of charitable contributions differ to a small degree from estate, gift, and GST valuations, but these minor variations are outside the purview of this article. *See, e.g.,* Reg. §1.170A-1(c)(2).

[22] §2624. The alternate valuation rules of §2032 also apply to GST transfers at death.

[23] §2031.

[24] *See* §2032(d) (election). The alternate valuation date is generally up to six months after the date of the decedent. *See* §2032(a)(1)-§2032(a)(3).

[25] §2031(a).

[26] Inclusion in the decedent's gross estate property in which the decedent had an interest (§2033), inclusion of certain gifts that the decedent made within three years of his death (§2035), inclusion of transfers with retained life estates (§2036), inclusion of transfers taking effect at death (§2038), and inclusions of transfers that were revocable by the decedent until the die was cast at his expiration (§2039). Somewhat more straightforward, though no less important, are the inclusion of annuities, joint interests, powers of appointment, life insurance proceeds, dower or curtesy interests, transfers made without sufficient consideration, prior interests, and certain property for which a marital deduction was previously allowed. §2034, §2039–§2045.

[27] Reg. §20.2031-1(b).

[28] *See* Kelley, T.M. 830 *Valuation: General and Real Estate,* §II(A)(5)(a).

[29] *See, e.g., Estate of Berg v. Commissioner*, T.C. Memo 1991-279, *aff'd in part, rev'd in part,* 976 F.2d 1163 (8th Cir. 1992).

[30] *See Cont'l Cablevision of New England, Inc. v. United Broad. Co.*, 873 F.2d 717, 730 (4th Cir. 1989) (citing Leach, Perpetuities in a Nutshell, 51 Harv. L. Rev. 638, 643-44 (1938)). With respect to the fertile octogenarian, the class of ''the issue of my sister'' remains open until the sister dies at a ripe old age of 86. With respect to the unborn widow, the class of ''my son's widow'' remains open until the son's death, even if the ''widow'' has not yet been born when the interest was created.

[31] *Estate of Jackson*, T.C. Memo 2021-48 (citing *Estate of Simplot v. Commissioner*, 249 F.3d 1191, 1195 (9th Cir. 2001) (citing §2033), *rev'd and rem'd*, 112 T.C. 130 (1999).; *Morrissey v. Commissioner*, 243 F.3d 1145, 1148 (9th Cir. 2001), *rev'g Kaufman v. Commissioner*, T.C. Memo 1999-119; *Cave Buttes, L.L.C. v. Commissioner*, 147 T.C. 338, 357-358 (2016)).

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affection, he is not the hypothetical buyer envisioned by the Tax Court. By the same token, a willing buyer is not your average Joe; his putative knowledge extends beyond publicly known facts. The Tax Court presumes that the buyer is '' 'reasonably informed' and 'prudent' and that he has asked the hypothetical willing seller for information that is not publicly available.''[32]

As black and white as the Treasury regulations are, even the regulations presume that the buyer has ''reasonable knowledge of relevant facts'' affecting the value of the property.[33] This presumption applies even if the relevant facts at issue were unknown to the decedent on the date of his reckoning.[34] What's more — *hypothetically of course* — both parties are presumed to have made a reasonable investigation of all relevant facts uncovered during the course of negotiations over the purchase price of the property.[35]

Complications of rigor mortis aside, because it is ''fundamental'' that property is valued in the decedent's hands at death,[36] it is generally inappropriate to ascribe value based upon post-death evidence. Nonetheless, as noted above, ''[t]he temptation to use hindsight is usually too great.''[37] This Epimethean prohibition is not absolute.[38] A court *may* consider subsequent events, but only ''to the extent that they were *reasonably foreseeable*'' at the time the decedent breathed his last.[39]

The Tax Court's measured pragmatism extends further, such that the willing buyer must be just that, *willing*. A buyer must not be compelled or threatened with loss of life and limb should he choose not to buy the property. The courts have found that when a buyer feels like it is ''up against the wall'' and without a choice except to buy, this buyer is decidedly *un*willing.[40] A forced or harried buyer is not a hypothetically willing one, for purposes of valuation of an estate.[41] By way of example, if, before his death, Uncle Bill received ''an offer he could not refuse'' from Frankie ''the Fist'' Baldalino to sell his beloved emu farm, this offer price would not be an accurate representation of the farm's fair market value.

Moving beyond fairness, the use of ''market'' in the term ''fair *market* value'' should not be overlooked. The hypothetical buyers do not perform their hypothetical shopping in a vacuum; the relevant market in which similar property is bought and sold must be considered. For tangible personal property, like a vintage red VW microbus, this market is usually easily discernable.[42] By way of example, the Treasury regulations note that the FMV of a used car is the price for which a clunker of approximately the same description (make, model, mileage, age, number of strips of duct tape holding the bumper up, *etc*.) could be purchased by a member of the general public, not a dealer.[43]

The hypothetical buyer also is assumed to be purchasing the property for its highest and best use.[44] In our previous example, if the red VW microbus were one and the same as the vehicle that transported the half-a-ton of garbage, shovels, rakes, and implements of destruction to the fifteen foot cliff off the side of the side road in Arlo Guthrie's classic eighteen-minute ballad, ''Alice's Restaurant,''[45] the sheer cultural and historical significance of that particular vehicle would

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[32] *Estate of Jackson*, T.C. Memo 2021-48 (quoting *Estate of Kollsman v. Commissioner*, T.C. Memo 2017-40, *aff'd*, 777 F. App'x 870 (9th. Cir. 2019)).

[33] Reg. §20.2031-1(b).

[34] *United States v. Simmons*, 346 F.2d 213, 217–218 (5th Cir. 1965).

[35] *Estate of Kollsman*, T.C. Memo 2017-40 (citing *Bergquist v. Commissioner*, 131 T.C. 8, 19 (2008) (concluding that on the valuation date a corporation was no longer a going concern as ''a reasonably informed and willing buyer or seller'' would have been aware of imminent changes likely to cause operations to cease)).

[36] *Estate of Jackson*, T.C. Memo 2021-48 (citing *Estate of Simplot*, 249 F.3d at 1194-95).

[37] *Estate of Jackson*, T.C. Memo 2021-48 (citing *Estate of Gilford v. Commissioner*, 88 T.C. 38, 52 (1987)).

[38] The Greek titan Epimetheus, whose name means ''hindsight'' or ''afterthought.'' He was the brother of Prometheus (meaning ''foresight'' or ''forethought,'' who brought fire to humankind in a bundle of reeds), and he was the husband of Pandora (meaning gift to all), the first woman on earth, who famously opened a large jar (*not a "box," Erasmus*) and, in doing so, gifted all of humankind with sorrow, illness, and other assorted and sundry evils.

[39] *Estate of Jackson*, T.C. Memo 2021-48 (citing *Trust Servs. of Am., Inc. v. United States*, 885 F.2d 561, 569 (9th Cir. 1989); *Estate of Gilford*, 88 T.C. at 52) (emphasis added).

[40] *Saltzman v. Commissioner*, 131 F.3d 87, 93-94 (2d Cir. 1997), *rev'g* T.C. Memo 1994-641.

[41] *Saltzman v. Commissioner*, 131 F.3d 87, 93-94 (2d Cir. 1997), *rev'g* T.C. Memo 1994-641.

[42] *Estate of O'Keeffe v. Commissioner*, T.C. Memo 1992-210 (discussing the relevant market for works of art, not a VW microbus).

[43] Reg. §20.2031-1(b); *see also Lio v. Commissioner*, 85 T.C. 56, 66 (1985), *aff'd sub nom. Orth v. Commissioner*, 813 F.2d 837 (7th Cir. 1987). If, however, the property is something not usually sold to the general public, like uncut gems or scholarly books, the price may be determined by what a jeweler or a library, respectively, would pay. *Anselmo v. Commissioner*, 80 T.C. 872, 882 (1983), *aff'd,* 757 F.2d 1208 (11th Cir. 1985) (gems); *Skripak v. Commissioner*, 84 T.C. 285, 322 (1985) (books).

[44] *Frazee v. Commissioner*, 98 T.C. 554, 563 (1992); *Symington v. Commissioner*, 87 T.C. 892, 896 (1986); *Stanley Works v. Commissioner*, 87 T.C. 389, 400 (1986).

[45] Seeing as the dump in Stockbridge, Massachusetts was closed on Thanksgiving Day. *See* Arlo Guthrie, ''Alice's Restaurant Massacree,'' *Alice's Restaurant* (Reprise Records, 1967). It bears noting that the valuation of the twenty-seven, eight-by-ten colored glossy photographs with circles and arrows and a paragraph on the back of each one explaining what each one was to be used as evidence against Arlo and his confederates—though a

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mean that the ''reasonable and probable use that supports the highest present value'' is as a museum piece or a collectible for a most discerning hippie.[46]

To determine what uses are reasonable and probable, the Tax Court focuses on ''[t]he highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future.''[47] The FMV of property is not affected by whether the decedent actually put the property to its highest and best use, nor whether he ever intended to do so.[48] Thus, a flower bulb farm was held by the Tax Court to be better used as an industrial site,[49] and a rice farm was found to be more valuable as a rural residential property.[50] Although the ''highest and best use'' test is usually reserved for real property,[51] it may be extended to underutilized personal property, such as Arlo's red VW microbus.

Questions regarding discounts for fractional interests,[52] discounts for lack of control and marketability of interests in closely-held companies,[53] the special rules applicable to valuations of real estate,[54] and many other factors and tests play an important role in the valuation of complex estates. Because we are concerned in this article with estate tax valuation through the lens of *Estate of Jackson*, where these factors were given short shrift, we will afford them the same measure of shrift in this article.[55] With respect to Jackson's interest in Sony/ATV, for example, the IRS's expert did not apply any discounts for lack of control or lack of marketability,[56] whereas the estate's expert applied a 20% discount for lack of marketability and a 15% discount for lack of control.[57] How much space did the Tax Court dedicate to this issue within the 271 pages of the opinion? It found that Jackson's interest was fully marketable and settled on a 5% lack of control in less than one half of one paragraph.[58] *Short shrift, indeed.*

ON EXPERTS AND ANTIPATHY

Though its valuations are binding, the Tax Court acknowledges that it is not a valuation expert. Nevertheless, Tax Court judges have a uniquely keen sense of when and whether a particular expert's valuation passes the jurisprudential ''smell test.'' Sycophantic experts and those attempting to justify extreme valuations are as offensive to the Tax Court as day-old tuna noodle casserole reheated two minutes too long in your firm's lunchroom microwave by a clerk named Felicia, the ignominious stench of which will linger longer than Felicia's tenure at this rate.

In a 1967 Tax Court opinion, Judge Alan K. Tannenwald observed that ''[t]oo often in valuation disputes, the parties have convinced themselves of the unalterable correctness of their [expert's] positions and have consequently failed successfully to conclude settlement negotiations — a process clearly more conducive to the proper disposition of [valuation] disputes.''[59] On account of the parties' doggedness, valuation disputes often ''result is an overzealous effort, during the course of the ensuing litigation, to infuse a talismanic precision into an issue which should frankly be recognized as inherently imprecise and capable of resolution only by a Solomon-like pronouncement.''[60]

Thirteen years hence, Judge Tannenwald once again took up his mantle of antipathy towards experts and valuation cases, observing that the court was ''convinced that the valuation issue is capable of resolution by the parties themselves through an agreement which will reflect a compromise . . . thereby saving the expenditure of time, effort, and money by the parties and the Court — a process not likely to produce a better result.''[61] The parties should understand, Judge Tannenwald continued, that the court may find the evidence of valuation by one of the parties' experts ''sufficiently more convincing than that of the other party, so that the final result will produce a significant financial defeat for one or the other, rather than a middle-of-the-road compromise which we suspect each of the parties expects the Court to reach.''[62]

Judge Holmes, like Judge Tannenwald before him, appeared to find great solace in the fact that he was

typical case of American blind justice—would, similarly, be difficult.

[46] *Symington*, 87 T.C. at 897.

[47] *Olson v. United States*, 292 U.S. 246, 255 (1934).

[48] *Stanley Works*, 87 T.C. at 400.

[49] *Frazee*, 98 T.C. at 563.

[50] *Estate of Pattison v. Commissioner*, T.C. Memo 1990-428.

[51] *Estate of Pattison v. Commissioner*, T.C. Memo 1990-428.

[52] *See, e.g., Estate of Iacono v. Commissioner*, T.C. Memo 1980-520.

[53] *See, e.g., Kerr v. Commissioner*, 292 F.3d 490 (5th Cir. 2002).

[54] *See, e.g., Kissling v. Commissioner*, T.C. Memo 2020-153.

[55] For a more holistic and detailed review of these other elements, *see generally* Kelley, T.M. 830, Note 28, above.

[56] *See Estate of Jackson*, T.C. Memo 2021-48.

[57] *See Estate of Jackson*, T.C. Memo 2021-48.

[58] Indeed, the Tax Court stated only that ''Jackson's interest is less valuable than Sony's since Jackson couldn't control day-to-day activities. But at the same time, Jackson was still able to block major decisions, which presumably were more important, and he was still a 50% owner. We find that only a 5% discount for lack of control is appropriate.'' *Estate of Jackson*, T.C. Memo 2021-48 at BL 71.

[59] *Symington*, 87 T.C. at 904.

[60] *Symington*, 87 T.C. at 904.

[61] *Buffalo Tool & Die Manufacturing Co., Inc. v. Commissioner*, 74 T.C. 441, 452 (1980).

[62] *Buffalo Tool & Die Manufacturing Co., Inc. v. Commissioner*, 74 T.C. 441, 452 (1980).

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not bound by any particular expert's opinion, and that he had the broadest discretion to accept — or dismiss with a casual stroke of his pen — the opinion of an anointed ''expert.''[63] For instance, when the Tax Court ''see[s] and hear[s] an expert who displays an unyielding allegiance to the party who is paying his or her bill, [the Tax Court] need not and generally will not hesitate to disregard that testimony as untrustworthy.''[64]

In situations where experts offer divergent FMVs, the Tax Court will weigh and measure each estimate by analyzing the factors used to arrive at the figures and determine whether one or both conclusions are found wanting.[65] Often, as in *Estate of Jackson*, the Tax Court will interpose its own valuation. As a ''a Solomon-like pronouncement,'' the Tax Court's valuation is, in the end, the only valuation that matters.

THROUGH THE LENS OF ESTATE OF JACKSON

Having laid out the valuation framework, we will now turn one of the more difficult to value assets at issue in the *Estate of Jackson* opinion: Jackson's ''image and likeness.'' To paraphrase Judge Holmes, the more complex a man is, the more complex his estate will be. Jackson's practically labyrinthine personal life, and the effect that it had on his estate — particularly on his image and likeness — results in a case study on valuation that would have made even the crafty Daedalus blush.[66]

As the Tax Court observes, there were times in Jackson's life when he was the most famous person in the world; there were also years when he was more famous for his antics than his music; and there were years where his fame turned to infamy by serious accusations of ''the most noisome acts.''[67] Ever the diplomat, Judge Holmes states that the Tax Court was not interested in *what* ''[Jackson] did or is alleged to have done,'' but only *how* ''what he did and is alleged to have done affected the value'' of his estate.[68] So, how did Jackson's actions and the allegations of his noisome actions affect his image and likeness? As with most estate tax cases, this question was met by dueling experts, which in Jackson's case consisted of a ''chorus'' on the side of the estate, and a ''soloist'' in the IRS's corner.[69]

THE EXPERTS

To value Jackson's image and likeness, the estate hired two experts, Mark Roesler, founder of an international licensing company specializing in representing celebrities (both dead and alive), and Jay Fishman, a professional appraiser for nearly 40 years. Additional experts were brought on to value Jackson's other assets, though it is unclear whether they were the baritones or basses in the valuation chorus. The IRS's soloist was Weston Anson, the owner of an intellectual-property consulting firm that specialized in trademark, patent, and copyright valuations. For over 25 years, Anson's business has been valuing famous assets, including a Lorax, a Campbell's soup can, and 2Pac's greatest hits.[70] As the opinion relates in detail, Anson quickly transformed from a star witness into a supernova, his supermassive ego collapsing in on itself by the end of the trial.

Because Anson was the IRS's *only* expert witness, his testimony was critical to the government's case. Like all expert witnesses, Anson needed not only to be knowledgeable and understandable, but he also needed to be likeable and credible. He lacked the latter two affectations. As for likeability, Anson's bluster and general air of superiority failed to endear him to Judge Holmes. As for his credibility, it ''suffered greatly at trial,'' as his abject perjury on the stand rather ''prejudiced'' the Tax Court.

By way of example, Anson testified that he had ''never worked for the Internal Revenue Service before.''[71] When pressed and asked, rather pointedly, whether he had ''previously been retained by the Commissioner to write an intellectual-property valuation report in Whitney Houston's estate-tax case, Anson replied: 'No. Absolutely not.' ''[72]

''That was a lie.''[73]

Approximately two years before he testified, the IRS *had* retained Anson to write a valuation report titled, *Analysis of the Fair Market Value of the Intan-*

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[63] *Neonatology Assocs., P.A. v. Commissioner*, 115 T.C. 43, 85-86 (2000), *aff'd,* 299 F.3d 221 (3d Cir. 2002); *see also Hunt & Sons, Inc. v. Commissioner*, T.C. Memo 2002-65; *Estate of Hall v. Commissioner*, 92 T.C. 312, 338 (1989); *Parker v. Commissioner*, 86 T.C. 547, 562 (1986).

[64] *Neonatology Assocs.*, 115 T.C. at 86.

[65] *Grieve v. Commissioner*, T.C. Memo 2020-28; *Estate of Davis v. Commissioner*, 110 T.C. 530, 538 (1998); *Casey v. Commissioner*, 38 T.C. 357, 381 (1962).

[66] In Greek mythology, Daedalus was considered the paragon of artifice, wit, and wisdom. He was the architect of the Minoan labyrinth in which he was later imprisoned (*too long a story, even for these footnotes*), and he crafted wax wings, which enabled him to escape said labyrinth, though his son Icarus, who famously flew too close to the sun, was not so lucky.

[67] *Estate of Jackson*, T.C. Memo 2021-48 at BL 2.

[68] *Estate of Jackson*, T.C. Memo 2021-48 at BL 2.

[69] *Estate of Jackson*, T.C. Memo 2021-48.

[70] Which is to say that Anson had been instrumental in valuing the estates of Dr. Seuss, Andy Warhol, and Tupac Shakur.

[71] *Estate of Jackson*, T.C. Memo 2021-48 at BL 23.

[72] *Estate of Jackson*, T.C. Memo 2021-48 at BL 23.

[73] *Estate of Jackson*, T.C. Memo 2021-48 at BL 23.

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gible Property Rights Held by the Estate of Whitney E. Houston as of February 11, 2012, For Estate Tax Purposes. After a brief recess and ''advice'' from IRS counsel, who had likely suffered a minor cardiac event when Anson denied his involvement in the report, Anson begrudgingly admitted that he had, in fact, been the author of such report. Had this been his only misstep, Judge Holmes may have chalked it up to faulty memory; yet Anson continued to dodge the truth, even when it served neither him nor the IRS any good whatsoever.

Anson took great umbrage at the suggestion by the Estate that he or his firm had ever advertised to promote its valuation business, and he resolutely testified that neither he nor his firm had done so. In short, ''[t]his was also a lie.''[74] In fact, *during trial,*[75] with unrestrained pomp and circumstance, Anson's firm sent an email that announced ''[w]hat has been described as the 'tax trial of the century' by the *Hollywood Reporter,* the case between the Internal Revenue Service and the Estate of Michael Jackson began in Tax Court this week. CONSOR Chairman Weston Anson is the *expert of the century* and will be testifying on behalf of the IRS.''[76]

Anson's vanity, however, was not reserved for email blasts. While on the stand, counsel for the Estate asked Anson whether he had referred to this case as a ''billion-dollar case,'' which, of course, he bombastically had in a lecture before the case began. Not to be outdone by himself, rather than simply denying the accusation, he implied once again that he was the ''expert of the century'' and that if the Estate's counsel could actually beat Anson, said counsel would be ''called the lawyer of the century.''[77] This sat about as well with Judge Holmes as gas station sushi, and although the Tax Court did not grant the Estate's motion to strike Anson's testimony *in toto,* it observed ''Anson did undermine his own credibility in being so *parsimonious with the truth* about these things he didn't even benefit from being untruthful about.''[78]

The Experts' Valuations

Three methods may be used in valuing unique assets: the income approach, the market approach, and the cost approach.[79] The income approach values an asset by calculating how much foreseeable revenue it will produce and discounting that revenue back to its present value. The market approach values an asset by comparing it to the prices at which similar assets have changed hands in arm's-length transactions close in time to the decedent's offing. The cost approach values an asset by computing the cost of recreating it. Both the IRS and the estate used the income approach with respect to Jackson's image and likeness.

Appraisers using the income approach may employ one of two models: discounted cash flow and capitalization. Valuations under the capitalization model are a function of the income generated by an asset. The capitalization model is most frequently used for real estate,[80] because it is best suited to value assets earning a steady stream of income.[81] In contrast, when assets have *not* achieved a stabilized level of income, the capitalization method produces a ''skewed and discordant picture of reality,''[82] somewhat akin to a Salvador Dali painting of a hippopotamus riding a tricycle.

The discounted cash flow approach, used by both the estate and the IRS, has two main variables: the projected future cashflow stream and the discount rate.[83] The discount rate accounts for the time-value of money in computing the present value of an asset's future income.[84] The parties in *Estate of Jackson* differed on the discount rate. The core disagreement between the parties was whether the Tax Court could consider the effect that Jackson's other assets might have on his image and likeness, a concept known in the valuation circles as ''synergy.''

Anson delighted in synergy, and, according to the Tax Court, he ''kept trying . . . to include the value of Jackson's copyrights [among other unrelated assets] in the value of the assets at issue.''[85] Anson justified his methods by arguing that the assets were more valuable if bundled and exploited together. The Tax Court was skeptical, in large part because ''[f]rom the

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[74] *Estate of Jackson*, T.C. Memo 2021-48 at BL 23.

[75] It is unclear whether Anson was physically on the stand while this happened, but given his general style, it would not shock one's conscience if it were so.

[76] *Estate of Jackson*, T.C. Memo 2021-48 at 23 (emphasis added)

[77] *Estate of Jackson*, T.C. Memo 2021-48 at 23.

[78] *Estate of Jackson*, T.C. Memo 2021-48 at 23 (emphasis added, because it's just too good a phrase not to emphasize).

[79] *See United States v. Eden Mem'l Park Ass'n*, 350 F.2d 933, 935 (9th Cir. 1965); *Marine v. Commissioner*, 92 T.C. 958, 983 (1989), *aff'd without pub. op.,* 921 F.2d 280 (9th Cir. 1991).

[80] *Robinson v. Worley*, 849 F.3d 577, 584 (4th Cir. 2017) (citing *In re Windsor Hotel, L.L.C.,* 295 B.R. 307, 310–311 (Bankr. C.D. Ill. 2003)).

[81] *See In re Southmark Storage Assocs. L.P.*, 130 B.R. 9, 14 (Bankr. D. Conn. 1991) (applying the approach to a storage facility); *In re First Tulsa Partners*, 91 B.R. 583, 586 (Bankr. N.D. Okla. 1988) (using capitalization rates to value office buildings).

[82] *Union Pac. R.R. Co. v. State Tax Comm'n*, 716 F. Supp. 543, 555 (D. Utah 1988).

[83] *Estate of Jackson*, T.C. Memo 2021-48.

[84] *See Shepherd v. Commissioner*, 115 T.C. 376, 392 (2000), *aff'd,* 283 F.3d 1258 (11th Cir. 2002).

[85] *Estate of Jackson*, T.C. Memo 2021-48 at BL 26.

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Estate's perspective, this kind of valuation is just hindsight, not even 20/20 hindsight, but more like that of an eagle or a spy satellite.''[86]

The Tax Court found that Anson's synergistic approach suffered from ''a pair of problems.''[87] The first problem was that the assets required active management, and it is extraordinarily ''difficult to distinguish between the value of [Jackson's image and likeness] and the value of its management.''[88] The second problem was that under a long line of precedent, the Tax Court was not permitted to consider synergy in its computation.

Ultimately, the Tax Court chose to ''do what [it has] always done—separate facts known or knowable at the date of death from those remoter in time or unforeseeable, and then ask what a hypothetical buyer in possession of these facts would offer for them in an arm's-length deal with a similarly knowledgeable hypothetical seller.''[89] In so finding, the Tax Court rejected Anson's approach to aggregating additional assets into the valuation of Jackson's image and likeness.

In doing so, the Tax Court pointed first to the Estate's Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return* (Estate Tax Return), which segregated each asset at issue from one another. Neither before the litigation (in the notice of deficiency), nor had the IRS once objected to the separate listing of these assets during the case (either in the stipulation of facts or in its briefs). Furthermore, the IRS had even stipulated to the valuation of certain smaller assets not at issue in the case, including Jackson's copyrights, which copyrights Anson sought to shoehorn into the value of Jackson's image and likeness.

The Tax Court held that the IRS could not renege on the previous factual stipulations in an effort to ''cram the *value* of [stipulated] assets into the value of assets whose *value* [the IRS] did not stipulate.''[90] Although the Tax Court could ''assume that the Estate's assets can be used together to generate value,''[91] it refused to allow Anson to include other assets in the valuation calculus in regards to Jackson's image and likeness.

Intellectual Property . . . for Tax Lawyers

In 1973 Bob Dylan recorded a song that fans called ''Rock Me, Mama.'' The Tax Court notes that ''Rock Me, Mama'' was more of a ''chorus'' than a ''song'' made up of lyrics that Dylan wrote set to a tune he created. Subsequently, Ketch Secor, a member of the band Old Crow Medicine Show, used the chorus created by Dylan and wrote the verses for a song that eventually became ''Wagon Wheel.'' A few years later, Darius Rucker released his own interpretation of ''Wagon Wheel.'' In doing so, Rucker was performing both Dylan's and Secor's composition.[92]

In the Tax Court's example, Dylan is the composer of both versions of ''Wagon Wheel,'' as his compositions (the lyrics and music) are the ones being performed. Secor also has composition rights to both versions of the song ''Wagon Wheel,'' as he wrote additional verses to the song. Old Crow Medicine Show and Rucker (as recording artists) have performance rights in their respective master recordings of ''Wagon Wheel.''

The right of publicity (ROP) is a creation of state law and is defined as the right to control the commercial use of one's identity.[93] ROP consists of the celebrity's name, likeness, voice, signature, or photograph, as well as all associated trademarks. Although in the late 1970s Dracula nearly drove a stake through the heart of ROP protections for dead celebrities in California (where Jackson lived and the case was brought),[94] the state legislature subsequently enacted a law, allowing the right to publicity to survive the death of the celebrity to be passed down to the celebrity's heirs and assigns like any other probate asset.[95]

At trial, the Estate valued Jackson's image and likeness at just a shade over $3 million, while the IRS valued it in the neighborhood of $161 million. This $158 million discrepancy arose, in large part, because instead of using the amounts that Jackson had *actually* made during the last years of his life, Anson used what he called ''foreseeable opportunities,'' which he believed to be ''reasonably expected'' at the time of

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[86] *Estate of Jackson*, T.C. Memo 2021-48 at BL 26.

[87] *Estate of Jackson*, T.C. Memo 2021-48 at BL 26.

[88] *Estate of Jackson*, T.C. Memo 2021-48 at BL 26.

[89] *Estate of Jackson*, T.C. Memo 2021-48 at BL 28 (citing *Estate of Giustina v. Commissioner*, 586 F. App'x 417, 418-19 (9th Cir. 2014), *rev'd and rem'd,* T.C. Memo 2011-141).

[90] *Estate of Jackson*, T.C. Memo 2021-48 at BL 28 (citing *Stamm Int'l Corp. v. Commissioner*, 90 T.C. 315, 320–21 (1988)).

[91] *Estate of Jackson*, T.C. Memo 2021-48 at BL 29.

[92] Likely performing the song whilst ''headin' down south to the land of the pines, thumbin' [his] way into North Caroline [sic]."

[93] *C.B.C. Distrib. & Mktg., Inc. v. Major League Baseball Advanced Media, L.P.*, 505 F.3d 818, 822 (8th Cir. 2007) (citing *Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562, 566 (1977)).

[94] To be more exact, in a case brought by the widow of the ''American Dracula,'' Bela Lugosi, the California court held that ROP does *not* survive death. *See Lugosi v. Universal Pictures*, 603 P.2d 425, 428, n.6 (Cal. 1979).

[95] *See* California Civil Code, §3344.1 (abrogating *Lugosi*).

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Jackson's death.[96] The Tax Court, more inclined towards a fact-based creed, rejected these beliefs.

Though the Tax Court found a number of problems with Anson's projections, the most significant ''problem with Anson's report is its math.''[97] Unfortunately for Anson, and fatally for the IRS, the Tax Court found that, by using a synergistic method, ''Anson did not value the asset that he should have.''[98] Moreover, Anson's ''future opportunities unquestionably contain non-image-and-likeness revenue on even a cursory review,'' including *potential* opportunities with the Cirque de Soleil, Broadway shows, online games, theme parks, movies, etc.[99]

Inclusion of such improper revenue, however, ''was also not Anson's only big mistake.'' Not only did Anson's ''future opportunities'' contain revenue that was decidedly not related to Jackson's image and likeness, but they also contained revenue that was wholly unforeseeable at the time of Jackson's death. As we observed above, the Treasury regulations limit the FMV of an estate as to what a buyer and seller would have reasonable knowledge about ''as if in the hands of the decedent'' at the moment he bought the farm.[100]

Judge Holmes, in passing, brilliantly blurs the line between law and philosophy, when, like René Descartes himself, Holmes expostulates that ''[f]oreseeability can't be subject to hindsight.''[101] What *was* ''entirely foreseeable at the time of Jackson's death'' was that his ''reputation as a person (not as a musician) was not in a good place.''[102] Inclusion of (unforeseeable) future revenue from circuses, theme parks, games, movies, and Broadway shows in the calculation of the date-of-death value of Jackson's image and likeness would run roughshod over the principles of valuation set forth in the I.R.C., Treasury regulations, and established Tax Court precedent. To revisit an earlier simile, such inclusion would have painted an even further ''skewed and discordant picture of reality,'' more akin to one of Kandinsky's theoretical abstract compositions,[103] than even a bloat of surrealist, tricycling hippopotami.[104]

Thus, the Tax Court was disinclined to include potential revenue from Anson's ''future opportunities'' in its calculation of the date-of-death value of Jackson's image and likeness. To this point in the opinion, Judge Holmes had avoided any overtly *ad hominem* attacks against Anson. Having tried the measured jurist's patience for the last time, Judge Holmes (at the apex of his wit and snark) summarily observed that ''Anson's analysis —*quite apart from the taint of his perjury* — is unreliable and unpersuasive.''[105]

Although the Tax Court did not agree in all respects with the analyses of the Estate's experts, Fishman and Roesler, it found their analyses ''much closer to reality.'' Having flatly rejected Anson's calculations ($161.3 million), and not being wholly persuaded by the estate's ($3.1 million), the Tax Court exercised its prerogative and calculated the value of Jackson's image and likeness as of the date of his death to be $4.2 million. In doing so, the Tax Court adopted Fishman's estimate of the expenses of administering Jackson's image and likeness, as well as the significant outlay that the Estate would have to make to rehabilitate and polish Jackson's tarnished image, arriving at a figure just over $1 million above the Estate's valuation and just over $157 million below the IRS's calculations.

A Brief Note on Penalties

Pursuant to §6751(b)(1), nearly every penalty must be approved in writing by the immediate supervisor of the individual asserting the penalty prior to the ''initial determination'' of the penalty.[106] In practice, if a penalty had not been timely approved, the Tax Court will disallow it in full. The test is simple, and the result is potentially devastating for the IRS.

Despite the nearly $200 million in accuracy related penalties at issue in the case, the estate did not raise the prior supervisory approval requirement in their petition, or otherwise during the case. In fairness to the Estate, §6751(b)(1) had been invoked by a legitimate

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[96] *Estate of Jackson*, T.C. Memo 2021-48.

[97] *Estate of Jackson*, T.C. Memo 2021-48 at BL 54 (including failure to account for management expenses for Jackson's image and likeness).

[98] *Estate of Jackson*, T.C. Memo 2021-48 at BL 50.

[99] *Estate of Jackson*, T.C. Memo 2021-48 at BL 50-51.

[100] Reg. §20.2031-1(b). Note that this ''farm'' is used euphemistically and is not the asset in question, unless in reference to Uncle Bill's emu farm, previously alluded to above, in which case it would serve both purposes.

[101] *Estate of Jackson*, T.C. Memo 2021-48 at 52.

[102] *Estate of Jackson*, T.C. Memo 2021-48 at 52.

[103] Wassily Kandinsky was an early 20th century Russian painter and art theorist. Kandinsky is generally credited as the pioneer of abstract art. Interestingly, Kandinsky was a professor of law and economics until the age of thirty, when he decided that the law no longer captivated him, and he enrolled in the Munich Academy to become a painter. The moral of this story is that there is yet hope for the more creative lawyers among our ranks.

[104] Yes, a group of hippos is called a ''bloat.'' For an interesting history of the animal group nomenclature, which traces its roots to the 15th century, *see* Kerry Medina, *Why a Group of Hippos is Called a Bloat*, BBC.com (Nov. 9, 2018).

[105] *Estate of Jackson*, T.C. Memo 2021-48 at BL 55 (emphasis added). It is at this point, you might imagine, that Judge Holmes dropped the mic and left the stage to raucous applause, much hooting, and a modicum of hollering.

[106] §6751(b)(1); *see, e.g., Belair Woods, LLC v. Commissioner*, 154 T.C. 1 (2020).

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petitioner for the first time in 2015,[107] and it had been invoked only by a handful of tax protesters and wholly frivolous *pro se* petitioners prior to that time.[108]

With respect to the liability of an *individual* for a penalty, the burden of production lies with the IRS.[109] However, an estate is not an individual.[110] Therefore, the Estate bore the burden of production with respect to the accuracy related and the gross valuation misstatement penalties.[111] The Tax Court acknowledged that being required to produce affirmative evidence that the IRS possesses no *actual* evidence of approval is a rather unusual burden.

In a case published just before *Estate of Jackson*,[112] the Tax Court discussed this ''unusual burden'' and opined that the proper course of action would have been for the estate to submit a Freedom of Information Act request and to submit the IRS's administrative file into evidence. If the administrative file were devoid of evidence of supervisory approval, the estate would have satisfied its burden of production.[113]

Nevertheless, as Judge Holmes observes, ''*Thriller* is part of the record here . . . [s]o are demons, vampires, monsters, ghosts, and even the funk of 40,000 years . . . [b]ut the record lacks any evidence that the [IRS] failed to obtain supervisory approval.''[114] Not being able to argue lack of supervisory approval, the estate instead argued that it possessed reasonable cause under §6664, based on the complexity of the valuations and the Estate's reliance on competent tax advisors.[115]

The Tax Court cautioned, however, that an appraisal of the asset in question does not *per se* establish reasonable cause and good faith.[116] Instead, the Tax Court looks at the appraisers' qualifications, assumptions, the appraised value, and the circumstances under which the appraisal was obtained and makes its own holistic, Solomonic determination of reasonableness.[117]

Notwithstanding this admonition, the Tax Court agreed that the valuation of the three assets was indeed incredibly complex. This complexity is best evidenced by the sheer length of the opinion, which painstakingly details the approaches taken by the Estate's experts (whom the Tax Court found to be reputable and credible) and by the IRS's expert, Anson (whom the Tax Court found to be blustery and perjurious).

The Tax Court found (i) the Estate's appraisals were based on sound facts and the reasonable assumptions of competent and qualified experts; and (ii) the Estate reasonably relied on the experts' advice.[118] Thus, even though the Tax Court did not agree with two out of three of the Estate's ultimate figures (the value of Jackson's image and likeness and his interest in Mijac Music), the Tax Court found that the Estate's reliance on each of the appraisals was objectively ''reasonable'' under the I.R.C. In so finding, the Tax Court disallowed *all* accuracy-related and gross valuation misstatement penalties assessed against the Estate, to the tune of a $200 million loss for the IRS.[119]

CONCLUDING THOUGHTS

Within the pages of the prodigious opinion in *Estate of Jackson*, Judge Holmes deftly illustrates the theory and practice of valuing complex estates containing hard-to-value assets. Although experts are important in determining the value of these assets, the Tax Court is the ultimate arbiter in determining the value of the assets as if they were ''in the decedent's hands at the time of its transfer by death,'' even if such value is far below what the Estate later receives on the sale of the assets.[120] Further, only events that were entirely foreseeable as of the date the decedent shuffled off his mortal coil—such as a pending sale or transaction—may be included in the valuation ascribed to an item of property.

Though Jackson's surge in sales shortly after his death was ''foreseeable,'' the Tax Court noted that it was equally foreseeable that this resurgent wave would ebb in time. ''Popular culture always moves on

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[107] *Chai v. Commissioner*, T.C. Memo 2015-42, *aff'd in part, rev'd in part,* 851 F.3d 190 (2d Cir. 2017).

[108] *See, e.g., Quigley v. United States*, 358 F. Supp. 2d 427, 431 (E.D. Pa. 2004); *Erwin v. United States*, No. 05-1698 (CKK), 2006 BL 97995 at *2 (D. D.C. 2006); *Miller v. United States*, No. 06-1250, 2007 BL 252848, *1, n.1 (D. D.C. 2007); *Marsoun v. United States*, 880 F. Supp. 2d 59, 64 (D. D.C. 2012).

[109] §7491(c).

[110] *Estate of Ramirez v. Commissioner*, T.C. Memo 2018-196.

[111] §6662(b) (accuracy-related), §6662(h)(2)(C) (gross valuation misstatement).

[112] *Plentywood Drugs, Inc. v. Commissioner*, T.C. Memo 2021-46.

[113] *Plentywood Drugs, Inc. v. Commissioner*, T.C. Memo 2021-46.

[114] *Estate of Jackson*, T.C. Memo 2021-48 at BL 91.

[115] §6664(c).

[116] *Estate of Jackson*, T.C. Memo 2021-48 (citing Reg. §1.6664-4(b)(1)).

[117] *Estate of Jackson*, T.C. Memo 2021-48 (citing Reg. §1.6664-4(b)(1)).

[118] *Neonatology Assocs.*, 115 T.C. at 98 (stating that good faith reliance on the advice of an independent, competent professional as to the tax treatment of an item may satisfy the reasonable cause test, whereas reliance on insiders and promoters, or advisors who lack the requisite expertise to opine on the matter will not be reasonable).

[119] This tune, it should be noted, rung rather discordantly in the IRS's collective administrative ears.

[120] *Estate of Simplot*, 249 F.3d at 1194-1195.

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. . . [a]nd just as the grave will swallow Jackson's fame, time will erode the Estate's income.''[121] This erosion notwithstanding, the Tax Court had been called upon to value the three assets as of Jackson's death.[122] Judge Holmes obliged and found that the estate underreported its value by approximately $1 million with respect to Jackson's image and likeness, and approximately $105 million with respect to his interest in Mijac Music. The Tax Court agreed with the estate that Jackson's interest in Sony/ATV lacked any value. For those keeping score at home, the Tax Court's calculations resulted in a reduction of the Estate's deficiency (including penalties) of over *$570 million*.

William Wordsworth once wrote that memories are ''images and precious thoughts that shall not die and cannot be destroyed.''[123] Yet, as Judge Holmes observed, ''the grave will swallow Jackson's fame.'' Though the King of Pop will never fade completely from memory, and the question of whether he was, in fact, the father of Billie Jean's child may never be answered, the Estate's future income stream — especially the income arising out of Jackson's image and likeness — will likewise be eroded by the tides of time.

Jackson, like Wordsworth, Coleridge, and Keats, who wrote arguably the greatest poem on the immortality of art in his 1819 poem ''Ode to a Grecian Urn,'' left behind a valuable artistic legacy. *Estate of Jackson* pays homage to this legacy, all the while providing an equally valuable resource for practitioners and experts to use when faced with complex estates and unique assets.

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[121] *Estate of Jackson*, T.C. Memo 2021-48 at BL 93.

[122] *Estate of Jackson*, T.C. Memo 2021-48 at BL 93.

[123] William Wordsworth, ''The Excursion'' (1854).

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