

the facts

- closely held corporation
 - brothers Michael 77.18 pct, Thomas 22.82 pct
- stock purchase agreement August 2001
 - no lifetime voluntary or involuntary transfers, except
 - in event of bona fide third party offer,
 - each shareholder has right of first refusal
 - to extent not exercised, corporation may redeem
 - at death of either, survivor has option to purchase decedent's stock
 - mandatory to extent of insurance proceeds
 - if not exercised, corporation must redeem

the facts, cont'd

- stock purchase agreement, cont'd
 - price per certificate of value w/in 18 months
 - or if none, by appraisal
 - August 2001 stated value \$5.0 mil.
 - x .7718 = 3.859 mil.
 - payment one-third down,
 - or up to full amount of insurance proceeds
 - balance over 36 months
- corporation's obligation funded by \$3.5 mil. policies on life of each brother
 - Michael bought policies on his own life, contributed these to corporation
 - corporation bought policies on Thomas' life
 - cash values carried as assets on balance sheets

the facts, cont'd

- Michael died October 2013
 - Thomas appointed executor, successor trustee
 - negotiated new agreement w/ decedent's son
- November 2013 agreement w/ son
 - \$3.0 mil. of insurance proceeds for stock
 - another \$600k for decedent's half interest in warehouse owned by partnership
 - second warehouse to be appraised, son can either cash out or take half interest
 - son to have option to purchase Thomas' stock
 - price \$4.167 mil. for 18 months
 - certificate of value thereafter
 - if corporation sold w/in ten years, excess value over option price to be split

the facts, cont'd

- decedent's stock valued at \$3.0 mil. on 706
 - supported by "calculation of value" by CPA firm
 - cash flow capitalized at 11.45 pct
 - discount for lack of marketability 15 pct
 - add back nonoperating assets
 - cash value of policy on Thomas
 - unused proceeds of insurance on decedent
 - but excluding \$3.0 mil spent on redemption
- IRS assessed deficiency
- estate paid and sued for refund