

RAINEY, KIZER, REVIERE & BELL, P.L.C.

ATTORNEYS AT LAW
POST OFFICE BOX 1147

JACKSON, TENNESSEE 38302-1147

(731) 423-2414

THOMAS H. RAINEY
JERRY D. KIZER, JR.
RUSSELL E. REVIERE
WILLIAM C. BELL, JR.
JOHN D. BURLESON
GREGORY D. JORDAN
LAURA A. WILLIAMS
ROBERT O. BINKLEY, JR.
R. DALE THOMAS
DEANA C. SEYMOUR
CHARLES C. EXUM
MARTY R. PHILLIPS
DALE CONDER, JR.
TIMOTHY G. WEHNER
BRADFORD D. BOX
PATRICK W. ROGERS
ANGELA C. YOUNGBERG
MICHAEL L. MANSFIELD

MICHELLE GREENWAY SELLERS
KEELY N. WILSON
GEOFFREY A. LINDLEY
JESSICA BELL PRUETT
KATE E. RHODES
CRAIG P. SANDERS
MARY M. PETRINJAK
JONATHAN D. STEWART
JAMES V. THOMPSON
ADAM C. CRIDER
DANIEL E. KING
ASHLEY D. CLEEK
ERIN A. MELTON
SPENCER R. BARNES
W. PAUL WHITT
TODD D. SIROKY
JOSHUA A. HILLIS
ROBERT E. ALDERSON (RET.)
CLINTON V. BUTLER, JR. (RET.)

July 27, 2006

HIGHLAND AVENUE OFFICE:
105 SOUTH HIGHLAND AVENUE
JACKSON, TENNESSEE 38301
FAX: (731) 426-8111

MAIN STREET OFFICE:
209 EAST MAIN STREET
JACKSON, TENNESSEE 38301
FAX: (731) 426-8150

MEMPHIS OFFICE:
THE KOGER CENTER
65 GERMANTOWN COURT, SUITE 209
CORDOVA, TENNESSEE 38018
(901) 333-8101
FAX: (901) 751-9596

WRITER'S DIRECT DIAL NUMBER

BUY-SELL AGREEMENT SETS ESTATE TAX VALUE OF CLOSELY HELD STOCK

The Tax Court held recently that a Buy-Sell Agreement among family members fixed the estate tax value of closely held stock for a minority shareholder. The Court determined that the Buy-Sell Agreement met the requirements of Treasury Regulation 20.2031-2(h) and Code Section 2703.

As background, Section 2703 was enacted in 1990, which governs restrictive agreements among related shareholders. The general rule of Section 2703 is that any agreement to acquire property at less than its fair market value will be disregarded for Federal Estate Tax purposes, unless the agreement is a bona fide business arrangement, not a testamentary device, and comparable to those of similar arrangements entered into at arms length. Under Treasury Reg. 20.2031, for a restrictive agreement to control the value for Federal Estate Tax purposes, the offering price must be fixed and determinable under the agreement, the agreement must be binding on the parties both during life and after death, and the agreement must have been entered into for a bona fide business purpose and not be a substitute for a testamentary disposition.

In the Almie case, Mrs. Almie owned a minority interest in a closely held bank that did not pay dividends. There were a variety of agreements among different family members which allowed another family member to obtain Mrs. Almie's stock upon her death for a fixed price. After Mrs. Almie's death, the stock was sold to a family member at the price derived under the formula in the Buy-Sell Agreement. The IRS argued that the Buy-Sell Agreement failed to satisfy Regulation 20.2031.

The key factor considered by the Court was that the agreement met a business purpose because it sought to exercise prudent management of Mrs. Almie's assets by mitigating the risk of holding a minority interest in a closely held bank. The Court also said it was not a testamentary device because Mrs. Almie's estate received a fixed price for a minority interest in stock, the value of which was otherwise uncertain and subject to substantial litigation risk. The Court found this to be an arms length transaction.

MY RECOMMENDATION: As to Buy-Sell Agreements among family members, you cannot follow the approach that "any price goes." To be enforceable for setting the value of stock for an estate, the agreement must be entered into at arms length, have a legitimate business purpose, and establish fair market value for the stock.

RAINEY, KIZER, REVIERE & BELL, P.L.C.

William C. Bell, Jr.

This letter is intended to provide you with ideas for consideration in estate planning business. It is not intended to give a general solution applicable to all apparently similar individual problems, since slight changes in facts may require variance in legal advice. Please contact legal counsel with specific questions.