

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

PA

ESTATE OF MICHAEL J. JACKSON, )  
DECEASED, JOHN G. BRANCA, CO- )  
EXECUTOR AND JOHN MCCLAIN, CO- )  
EXECUTOR, )  
 )  
Petitioner(s), )  
 )  
v. ) Docket No. 17152-13.  
 )  
COMMISSIONER OF INTERNAL REVENUE, )  
 )  
Respondent )  
 )  
 )

**ORDER**

This case was on the Court’s November 17, 2014 trial calendar for Los Angeles, California, but was continued and is now set for a special session next February. Respondent has filed a motion *in limine* to exclude petitioner’s expert Nancy Fannon. He takes the position that Ms. Fannon’s report isn’t relevant or reliable in determining the fair market value of the assets in this case. Petitioner argues Ms. Fannon’s report is both relevant and reliable -- and that it presents important evidence for how and why taxes should be taken into account in a discounted cash flow analysis of the assets in this case.

If Ms. Fannon’s report “will help the trier of fact” figure this out, then her testimony should be admitted. Fed. R. Evid. 702(a). *Daubert’s* "gatekeeper" function in excluding evidence that is not reliable" certainly applies in Tax Court proceedings, *see Boltar, LLC v. Commissioner*, 136 T.C. 326, 334 (2011), but it is less urgent in a bench trial, *see id.*; *Volk v. United States*, 57 F. Supp. 2d 888, 896 n.5 (N.D. Cal. 1999). It is highly likely that the proper use of the discounted cash flow method will be an important issue in this case. Whether and how to take tax effects into account in that valuation will likely be crucial to the final numbers. At least at the threshold of trial, the Court concludes Ms. Fannon’s report will be helpful. (Or *may* -- cross-examination hasn't yet occurred, of course.)

**SERVED Dec 28 2016**

It is therefore

ORDERED that respondent's motion *in limine* to exclude expert report and proposed testimony of Nancy J. Fannon is denied.

**(Signed) Mark V. Holmes**  
**Judge**

Datedd: Washington, D.C.  
December 28, 2016