

## Michael Jackson's Image Worth Just \$4M, Tax Court Rules

By **Amy Lee Rosen**

Law360 (May 3, 2021, 3:37 PM EDT) -- Michael Jackson's image is worth under \$4.2 million, the U.S. Tax Court said Monday, much less than a \$161 million estimate by the IRS in its dispute with the estate of the pop megastar over the valuation of his assets.



Michael Jackson performing during his Victory Tour in July 1984. Ruling on the value of three assets at the time of Jackson's death in 2009, the U.S. Tax Court found their combined value was about \$111.5 million, compared with the IRS valuation of around \$482 million. (AP Photo)

Although Jackson reached a peak of fame during his lifetime unlikely to be obtained by many, and though his death led to a surge in sales of his albums and merchandise, the value of Jackson's image will likely fade over time, Judge Mark Holmes wrote for the court.

"Popular culture always moves on," Judge Holmes wrote. "Just as the grave will swallow Jackson's fame, time will erode the estate's income."

The Tax Court ruled on the value of three assets at the time of Jackson's death in 2009 that remained in dispute between the estate and the Internal Revenue Service: Jackson's right of publicity, his half interest in the Sony/ATV music publishing company and his interest in his music catalog company, Mijac Music. The IRS had originally adjusted the value of the estate to \$1.32 billion from \$7 million, demanding \$702 million in taxes and penalties, but other disputed valuations were settled before trial.

The estate had asserted the three remaining assets should be valued about \$5.3 million, while the IRS had valued the assets around \$482 million. The Tax Court ruled that the combined value of the assets was about \$111.5 million. While the Tax Court agreed with the estate that the interest in Sony/ATV was worthless, it said the interest in Mijac Music should be valued at \$107.3 million, rather than \$2.3 million, as the estate had argued.

The estate had initially valued Jackson's image at \$2,105, since the appraiser had found when Jackson died he needed income and had earned almost nothing from his likeness, the opinion said. Claims that Jackson sexually abused children also likely weighed on the value of his estate at death, Judge Holmes said.

"Allegations that a celebrity molested little boys might reasonably be thought to repel potential licensees in any society that has not become completely decadent," Judge Holmes wrote.

But at trial the estate brought in two more experts, one of whom evaluated Jackson's likeness to be worth over \$3 million because of revenue that could be generated from his image for the legal copyright life of 70 years, the opinion said.

Meanwhile the IRS' expert placed a much larger estimate of the value of Jackson's image — \$161 million — based on the future revenue that could come through themed attractions and products, branded merchandise, a Cirque du Soleil show, a film and a Broadway musical, the opinion said.

But those future revenue streams were not foreseeable when Jackson died, Judge Holmes said. At the time of his death, Jackson's reputation was dismal and in the last 10 years of his life he received no revenue related to his likeness, he said. Those factors led the court to conclude that the value of Jackson's image and likeness after death was worth just \$4.1 million, the opinion said.

The Tax Court also found that the fair market value of Jackson's interest in Sony/ATV on the day he died to be zero because of significant liabilities, resulting in no taxable income.

Judge Holmes said the third asset, Jackson's interest in Mijac Music, was the hardest to pinpoint.

"Mijac is the most difficult of Jackson's assets to value because its income derives from five different groups of songs, and each group produces income from three different sources," the opinion said.

To determine the appropriate value, the income stream from each revenue stream has to be projected and then discounted to its present value, Judge Holmes said. The revenue streams from Mijac included unreleased songs, certain domestic and international royalties, and sync fees, the opinion said. Sync fees are typically generated as a royalty paid for use in a commercial, television show or movie.

Judge Holmes determined these assets were worth almost \$176 million, plus an additional \$3.5 million in cash that was stipulated to by both parties. Combined with the total liabilities, the fair market value of Mijac was therefore \$107.3 million, the opinion said.

The IRS asserted the estate owed underpayment penalties, but since the estate correctly valued the Sony/AVT asset, no penalties applied there, Judge Holmes said. And even though the estate undervalued Jackson's likeness and its interest in Mijac, it relied on the estimate in good faith, so no penalties were appropriate, the opinion said.

This opinion is a thoughtful ruling by the court and a "huge, unambiguous victory" for Jackson's children, according to a statement provided to Law360 from the executors, John Branca and John McClain.

"For nearly 12 years Michael's estate has maintained that the government's valuation of Michael's assets on the day he passed away was outrageous and unfair, one that would have saddled his heirs with an oppressive tax liability of more than \$700 million," the executors said. "While we disagree with some portions of the decision, we believe it clearly exposes how unreasonable the IRS valuation was and provides a path forward to finally resolve this case in a fair and just manner."

Steven Toscher, who represents the estate, said the decision vindicates the estate's position regarding the valuation of Jackson's name and likeness as well as his interest in Sony/ATV.

"Importantly, it is the first opinion of the Tax Court dealing with the value of name and likeness and rejected the government's expert valuation," he said. "The court also found that where it determined a different value than the value reported on the federal estate tax return, the estate reasonably relied on its experts in good faith rejecting the assertion of any penalties."

Representatives of the IRS did not immediately respond to questions.

Jackson's estate is represented by Avram Salkin, Steven Richard Toscher, Edward M. Robbins Jr., Robert S. Horwitz and Lacey E. Strachan of Hochman Salkin Toscher Perez PC, by Paul Gordon

Hoffman and Loretta Siciliano of Hoffman Sabban & Watenmaker APC, by Jeryll S. Cohen of Freeman Freeman & Smiley LLP, by Sharyn M. Fisk of the Law Office of Sharyn Fisk and by Howard L. Weitzman of Kinsella Weitzman Iser Kump & Aldisert LLP.

The IRS is represented in house by Donna F. Herbert, Ray Malone Camp Jr., Jordan S. Musen, Sebastian Voth and Denise H. Larson.

The case is Estate of Michael J. Jackson et al. v. Commissioner of Internal Revenue, docket number 17152-13, in the U.S. Tax Court.

--Additional reporting by David Hansen. Editing by Tim Ruel.

*Update: This story has been updated with details of the ruling and comment from the estate.*

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