



FCG Estate and Gift Valuation E-Flash

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CITATION: Miller v. Commissioner, T.C. Memo. 2009-119, May 27, 2009

The Tax Court determined whether a discount was appropriate to apply to cash and securities transferred to a family limited partnership.

COMMENTS

In an unrelated recent case (*Estate of Jorgensen v. Commissioner* T.C. Memo 2009-66, March 26, 2009), the Tax Court found that transfers made by Mrs. Jorgensen to FLPs were not *bona fide* sales for full and adequate *consideration*. The court ruled that the partnership assets were co-mingled with personal funds and there were no non-tax purposes for the formation of the partnerships.

However, in the *Estate of Miller v. Commissioner*, the court found that the Miller FLP’s assets were not co-mingled with personal funds, there were valid reasons for the formation of the partnership, and the partnership was formed for legitimate, non-tax purposes.

Unlike *Miller*, family members in the *Jorgensen* case did not treat the FLPs as independent partnership entities. Accordingly, the court ruled in favor of the IRS and did not allow the discounts for the *Jorgensen* FLPs.

THE FACTS

Valeria M. Miller’s (“Decedent”) husband, Mr. Miller, spent a significant amount of his time during retirement charting and managing his family’s investment securities. He kept handwritten records of his investment activity.

Mr. Miller passed away during 2000. After his death, the family formed V/V Miller Family Limited Partnership (“MFLP”) during 2001. Later in 2002, a portion of the family’s investments was transferred to the Partnership. The Decedent was 86 years old upon the formation of MFLP and owned 920 of the 1,000 partnership units issued.

The Decedent’s son, Virgil, managed the assets of the partnership based on his father’s investment strategy of charting stocks. He also subscribed to several trade publications and purchased computer software for trading purposes.

The Decedent was diagnosed with congestive heart failure and suffered a traumatic brain injury during May 2003. During the same month, several transfers were made from her trust's investment account to MFLP. Mrs. Miller died on May 28, 2003.

SECURITIES TRANSFERRED DURING 2002

The IRS

The IRS argued that MFLP did not function as a business operation and a valid reason for the formation of the partnership did not exist. Further, the IRS argued that the Decedent stood on both sides of the transaction and retained rights in the property that were not relinquished until death. Additionally, the commissioner asserted Virgil's desire to reduce estate tax liability seemed to be the driving force for the 2002 transfer.

The Estate

The estate argued that there were legitimate and non-tax purposes for the formation MFLP. Supporting its arguments, the estate indicated that the partnership was formed to continue Mr. Miller's investment philosophy, and its assets were actively managed by Virgil. The Estate also pointed out that the Decedent seemed to be in relatively good health during the 2002 transfer and did retain sufficient funds for living expenses outside of the partnership.

Court Analysis

The court agreed that the partnership was formed for legitimate non-tax purposes and the 2002 transfer constituted a *bona fide* sale for adequate consideration.

SECURITIES TRANSFERRED DURING 2003

The IRS

The IRS argued that the Decedent stood on both sides of the 2003 transfer and did not retain sufficient assets outside of the partnership for living expenses. Also, the IRS argued that if it were the Decedent's desire to have the assets managed in accordance with Mr. Miller's investment methodology, she would not have waited until the last weeks of her life to make the transfer. The decline in Mrs. Miller's health and the attempt to reduce estate tax liability seemed to be the reasons for the 2003 transfer.

The Estate

The estate indicated that the Decedent transferred her remaining assets during 2003 because she wanted them to be managed in accordance with her husband's investment methodology.

Court Analysis

The court agreed with the IRS finding that the Decedent did not have legitimate non-tax purposes for the 2003 transfer of her remaining assets to MFLP.

CONCLUSION

The court allowed the application of a discount to the assets transferred during 2002, i.e., before the Decedent knew she had major medical problems. However, the Court did not allow the discount to the assets transferred shortly prior to the Decedent's passing because it found no non-tax reason for the transfer. Additionally, in the first transfer, the Decedent retained sufficient assets outside of the partnership to pay for living expenses but failed to do so in the second transfer.

Brueggeman and Johnson Yeanoplos, PC specializes in business valuation and litigation support services. Because of our education and background as CPAs we have a broad understanding of the financial, accounting, and tax issues surrounding valuation and commercial damage issues.

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