



FCG Valuation Case E-Flash

Issue 13:6

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CITATION

ESTATE OF ERMA V. JORGENSEN, Deceased; JERRY LOU DAVIS, Executrix and Co-Trustee; GERALD R. JORGENSEN, Co-Trustee, Petitioners, v. COMMISSIONER OF INTERNAL REVENUE, Respondent. No. 09-73250. United States Court of Appeals, Ninth Circuit. Argued and Submitted April 13, 2011 — Pasadena, California. Filed May 4, 2011.

OVERVIEW

The Ninth Circuit Court of Appeals affirmed a Tax Court determination that values of assets transferred to two family limited partnerships ("FLP") were includable in the Decedent's estate under § 2036(a) of the Internal Revenue Code.

E-FLASH TAKEAWAY

The Tax Court decision provided estate planning practitioners a guide book on how to doom the use of an FLP as an effective planning tool. More specifically, the co-mingling of assets, non-existent record keeping, poor management by general partners, legal counsel's failure to educate the clients, and failure of clients to understand the duties required of them undermined the taxpayer's arguments in this case. The Ninth Circuit affirmed the Tax Court's ruling in full.

THE

FACTS

The Tax Court determined that transfers of assets owned by Erma V. Jorgensen ("Decedent" or "Ms. Jorgensen") to FLPs were includable in her taxable estate. In particular, the Decedent's ignoring of partnership formalities (such as bookkeeping, meetings, meeting minutes, and the separation of personal and partnership assets), retention of benefit of the transferred property, and lack of non-tax reasons for partnership formation were cited by the Court.

On appeal, the Estate argued that although § 2036(a) applies in this case, the amounts paid out by Ms. Jorgensen should be considered *de minimis* or be limited to the actual amount accessed by the Decedent. The Ninth Circuit Court disagreed. In particular, it cited *Strangi v. Commissioner*, 417 F.3d 468, 477 (5th Circuit 2005) and *Estate of Bigelow v. Commissioner*, 503 F.3d 955, 964, 970 n.6 (9th Circuit 2007), both of which ruled that funeral expenses paid from partnership accounts indicated an agreement that the decedent would enjoy personal access to partnership funds.

The Appellate Court further noted that although Ms. Jorgensen only accessed \$90,000 herself, she could have accessed more had she so chosen. That ability indicated an agreement that Ms. Jorgensen enjoyed a personal right to what should have been partnership assets.

CONCLUSION

As a result of the preceding, the Appellate Court affirmed the Tax Court’s decision.

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