

## T&E - Alert July 16, 2009

Estate of Valeria M. Miller v. Commissioner of Internal Revenue, T.C. Memo 2009-119 filed May 27, 2009

The Miller FLP was comprised of \$3.8 million worth of securities, which the Executor managed in accordance with the methods developed by the decedent's predeceased husband, who used "candle" analysis to determine patterns signaling buys and sells and thus developed a specific investment philosophy and strategy. After the original funding of the FLP in 2002, an appraisal for gift tax purposes was filed which supported a combined 35% discount from net asset value to reflect the lack-of-control and lack-of-marketability aspects of the FLP interests.

A year later, the decedent's health took a turn for the worse, and the executor then transferred most of her remaining owned securities to the FLP. She died a few weeks later.

The Court made reference to several prior decisions including "bad facts" Stone [2003-309,] Bongard [124 T.C. No. 8,] Hurford [2008-278,] Jorgensen [2009-66,] as well as Mirowski [2008-74.] The Court was impressed by the fact that one of the legitimate purposes of the FLP was to continue managing the portfolios by the method historically used by the decedent's husband. The Court held that the FLP's "activities need not rise to the level of a *business* under the federal income tax laws in order for the bona fide transfer exception under Section 2036(a) to apply," thus throwing out the Service's argument.

The second transfer, however, did not pass muster because the Court characterized it as primarily motivated by testamentary considerations following the decline in the decedent's health. Accordingly, the securities transferred first were value after discounts, while the last ones were not.

The decision is at <http://www.ustaxcourt.gov>. Click on Opinions Search, fill-in "Miller" under Case Name Keyword and click Search. Then click on "Estate of Valeria M. Miller, Deceased..." A copy is available at <http://www.NYNJCT-BV.com/EstateMiller.TCM.WPD.pdf>.

Please do not hesitate to call or e-mail to discuss this or any other valuation issue.

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