

T&E - Alert Sept. 25, 2009

Keller v. United States of America, Civil Action No. 6:02-CV-00062 Southern District of Texas, Victoria Division filed Aug. 20, 2009

This case represents a total victory for the tax payer in an action for a sizeable estate tax refund. The district court agreed that the funding of the FLP could be assumed to have taken place, even though the decedent had died before all paper work could be signed, a la *Church*. Since the decision is based on nuances of Texas partnership law more than anything else, we shall merely mention the case, and will refer attorneys to a copy of the decision on our website. It is also plausible to think that the large discount allowed would not have been accepted by, say, the U.S. Tax Court; perhaps this was due to the star qualities of an appraiser with an extensive list of published works. The decision is at [http://www.NYNJCT-BV.com/Keller v US.pdf](http://www.NYNJCT-BV.com/Keller%20v%20US.pdf) .

Pierre v. Commissioner U.S. Tax Court 133 T.C. No. 2 filed August 24, 2009

The original member had selected an LLC vehicle to accomplish the goal of protecting a windfall for the benefit of trusts for her children; she transferred cash and securities to the LLC, then gifted LLC interests and later sold LLC interests to the trusts. The Court established here that a single-member LLC of New York law, which had elected to be treated as a disregarded entity for federal income tax purposes by filing form 8832 under the so-called "check-the-box" regulations, remains a valid, separate entity for federal gift tax purposes. The Service had contended that subsequent gifts and sales of membership interests should be treated as transfers of interests in the underlying securities merely because of the tax status of the LLC. Applying New York state law, the Court rejected that argument. The Court also reviewed the status of the gifting regulations in order to support its position. Accordingly, subsequent gifts and sales of membership interests could be valued with appropriate discounts from underlying asset values. Ten judges joined the majority while 6 dissented from the decision. A separate opinion will deal with the application of the "step-up transaction" doctrine or lack thereof, and with the discounts, if any.

The decision can be found on the U.S. Tax Court's website and at <http://www.NYNJCT-BV.com/Pierre.WPD.pdf> Please do not hesitate to call or e-mail to discuss this or any other valuation issue.

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