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Estate of Anna Mirowski, Deceased v. Commissioner of Internal Revenue, T.C. Memo 2008-74 filed March 26, 2008.

The daughter of the cardiologist who co-invented the implantable heart defibrillator in the seventies established, less than a month before her death in 2001, a family limited liability company which was funded by her share of the royalties under license, as well as marketable securities managed for diversification by one Wall Street firm. Gifts in the aggregate up to 48% interests in the LLC were then made to spendthrift trusts for her daughters. The Service argued that the LLC's assets are includible in Mrs. Mirowski's estate under IRC 2036(a), 2038(1) or 2035(a).

The Court decided instead that transfers of property to the LLC fell under the exception to 2036(a) as bona fide sales for an adequate and full consideration in money or money's worth - to which case law has added the "legitimate and non-tax reason" requirements of the Stone and Bongard decisions. The Court was impressed that the decedent wanted to involve her daughters, and eventually their offspring, in the complex management of royalties, including the prosecution of a lawsuit against the licensee, and in the management of the securities, supporting the Estate's claim. The decedent also wanted to provide for her descendants equally, and the Court looked to her background to support that intention, including her upbringing. The daughters' testimony was instrumental here, and the argument in favor of using a single money manager also convinced the Court.

The Court further analyzed the operating agreement of the LLC - which is attached in relevant parts to the opinion - and determined that the decedent did not retain any interest after transfer. The Court also determined that the decedent, after transferring sizeable assets to the LLC, had retained sufficient assets to live on. Her sizeable gift tax liability at the time, on the other hand, could not be paid from her own assets, but the Court accepted the fact that her own income from the LLC could have been used for that purpose, and that she could have borrowed against her interest. In the end, while her health was good until very shortly before her death, no related party had any intention or understanding to have the LLC pay the tax at the time. The LLC did pay the tax and other obligations of her estate and the beneficiaries sued the Commissioner for a refund. The LLC was kept operative as per the decedent's wishes.

The decision can be found at: http://www.ustaxcourt.gov/InOpHistoric/mirowski.TCM.WPD.pdf. A copy has been placed on my practice's website at http://www.NYNJCT-BV.com/mirowski.TCM.WPD.pdf

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

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