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Tax Court: Assets included in estate despite “deathbed tax planning”

The U.S. Tax Court today in a “reviewed opinion” granted the IRS motion for partial summary judgment, holding that the value of cash and securities transferred within days of death to a limited partnership was includible in the decedent’s estate.

The case is: *Estate of Powell v. Commissioner*, 148 T.C. No. 18 (May 18, 2017). Read the Tax Court’s [opinion](#) [PDF 186 KB]

Summary

The facts reveal the following timeline:

- August 8, 2008: The decedent’s son, acting on her behalf, transferred cash and securities to a limited partnership, in exchange for a 99% limited partner interest. The partnership agreement allowed for the entity’s dissolution with the written consent of all partners.
- August 8, 2008: The decedent’s son “purportedly” acting under a power of attorney, transferred the decedent’s interest in the limited partnership to a charitable lead annuity trust. The terms of the trust provided an annuity to a charitable organization for the rest of the decedent’s life, and at her death, the corpus of the trust was to be divided equally between her two sons.
- August 15, 2008: The decedent died.

The Tax Court majority focused on the decedent’s right to dissolve the limited partnership and additionally on the fact that the decedent’s partnership interest was transferred less than three years before her death, and concluded that the value of the cash and securities transferred to the limited partnership was includible in her gross estate under section 2036(a)(2). The majority opinion also found that the son lacked

authority under state law to transfer the decedent's limited partnership to the charitable lead annuity trust, thereby the value of the 99% limited partnership interest was includible in the estate under section 2033 or section 2038(a).

As part of this decision, there is an opinion "concurring in the result only" of seven judges that describes the transactions as "aggressive deathbed tax planning."

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