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TAX COURT CASE UPDATE

FCG Valuation Case E-Flash

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Citation:

Estate of Erma V. Jorgensen, Deceased, v. Commissioner of Internal Revenue, No. 09-73250, United States Court of Appeals, Ninth Circuit, 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.

The Facts:

The Tax Court determined that transfers of assets owned by the Decedent 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 the Decedent 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 the Decedent only accessed \$90,000 herself, she could have accessed more had she so chosen. That ability indicated an agreement that the Decedent 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.