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Court Says "No" to Beneficiary Swap

Charles Sukenik's 2004 will directed that the residue of his estate pass to a private foundation. His wife, Vivian, was to receive his real and tangible personal property under an inter vivos trust. In 2009, he named his wife as beneficiary of his IRA. Following Sukenik's death in 2013, Vivian asked the Surrogate's Court of New York to reform the living trust. She sought to add a pecuniary bequest to her of $3.2 million – the value of the IRA at Sukenik's death. She then wanted the private foundation to be named beneficiary of the IRA. This swapping of assets would carry out Sukenik's intent to benefit both Vivian and charity, but in a more tax efficient manner, she claimed.

While courts can reform instruments to effectuate a decedent's intent, they rarely do so to maximize tax exemptions or deductions, the court noted. The requested reformation is prompted not by a drafting error or change in law, said the court, but to minimize income taxes. The proposed change "relies on the general presumption that those executing testamentary instruments intend to minimize taxes." The court, however, found nothing in the will or trust to indicate Sukenik intended to minimize taxes.

Sukenik "thwarted the tax efficiency of his own estate plan," said the court. Nothing indicates why he chose to leave more to Vivian, or why in the four years between the IRA beneficiary designation and his death he did nothing to correct the "unfavorable tax consequences." In denying the reformation, the court said making this change would "open the flood gates to reformation proceedings aimed at curing any and all kinds of inefficient tax planning." ***In re Reformation Proceeding in the Estate of Sukenik,* 2016 NY Slip Op 31217(U)**.

Deduction Drops, Along With Value of Shares

Virginia Dieringer owned the majority of both the voting and nonvoting shares of Dieringer Properties, Inc. (DPI), a closely held real property management corporation. Two sons owned the remaining shares. In 2000, Dieringer created her will, a living trust and a private foundation. Her will left everything to the trust, which provided for $600,000 in specific charitable bequests. The balance of her estate, including the DPI shares, passed to the foundation.

An appraisal following Dieringer's 2009 death put the value of her DPI shares at nearly $17.8 million. The DPI board became aware that the shares would not provide sufficient cash flow to make the foundation's required distributions. In response, the DPI board agreed to redeem all of the trust's shares in exchange for promissory notes totaling slightly more than $6 million. This amount was based on an appraisal that used discounts for lack of control, lack of marketability and lack of voting power.

Dieringer's estate claimed a charitable deduction of $18.8 million, using the date-of-death value of the DPI shares. The IRS reduced the deduction to reflect the promissory notes. The estate argued that because it did not elect the alternate valuation method [Reg. §20.2032-1(b)], it was entitled to deduct the value of the shares at Dieringer's death. The estate blamed the drop in value between her death and the date of the redemption on a poor business climate and declining real estate market values. The estate's charitable deduction should not be measured by the value received by the foundation, since post-death events may alter that amount, the estate argued.

The IRS countered that Dieringer's sons thwarted her intent to bequeath her majority interest, or its equivalent value, to the foundation. The manner in which the two appraisals were conducted and the redemption of a controlling interest at a minority interest discount indicated that the sons never intended to give effect to Dieringer's testamentary plan.

The Tax Court acknowledged that while there were valid business reasons for the redemption, those reasons don't support the significant decline in only seven months. The trust did not transfer Dieringer's bequeathed shares or the value to the foundation and the estate was therefore not entitled to the deduction claimed. ***Estate of Dieringer v. Commissioner,* 146 TC 8**

CHURCHES' SHARES WERE VESTED

Stanley Carpenter's will directed that the net income from his farmland be paid to four relatives for their lives. As each died, his or her share would be split between First Baptist Church and First Presbyterian Church. The churches were named remainder beneficiaries at the death of the surviving relative.

In 2004, First Presbyterian dissolved its congregation and transferred its assets to Covenant Presbytery. The bank trustee paid First Presbyterian's share of the net rents to Covenant until 2011, when First Baptist questioned Covenant's rights to the payments. The circuit court found Carpenter created a testamentary trust, intending to benefit two churches in his community. Because First Presbyterian was no longer in existence, the court applied the cy pres doctrine, directing that all future distributions pass to First Baptist.

Covenant appealed, arguing that the testamentary trust was established for the sole purpose of managing the property and paying the income to the life income beneficiaries. First Presbyterian's interest vested at Carpenter's death, and the will did not create a charitable trust, Covenant argued. First Baptist acknowledged that the trust was for the administration of the life estates, but claimed it was also a charitable trust. First Presbyterian's interest was not assignable, First Baptist argued.

The Supreme Court of Arkansas found the language in Carpenter's will created present interests in the churches, which vested at his death. A vested interest is one that cannot be defeated by any contingency, explained the court. The only duty Carpenter gave to the trustee was to hold the farmland during the beneficiaries' lifetimes and then distribute the proceeds of the property to the churches. Because no charitable trust was created, the cy pres doctrine was inapplicable, the court ruled. As First Presbyterian's successor in interest, Covenant was entitled to the proceeds. ***Covenant Presbytery v. First Baptist Church*, 2016 Ark. 138**

NO OBLIGATION WHERE GIFT OFFER NOT ACCEPTED

Educational Institute Oholei Torah-Oholei Menachem filed a $1.8 million claim against the estate of Isaac Kramer, based on a pledge card and promissory note. Kramer, who died in 2008, signed the documents in 2006. The Surrogate's Court denied the Institute's motion for summary judgment and granted separate cross motions by Kramer's cousins.

Charitable pledges have been upheld on the theory that they constitute a unilateral offer of a donor to make a gift in the future which, when accepted by the charity by the incurring of a liability or detriment, ripens into a binding contractual obligation, noted the Supreme Court of the State of New York, Appellate Division. The Institute failed to show that it accepted Kramer's pledge by incurring a liability in reliance, so the Institute's motion for summary judgment was properly denied. ***In re Kramer*, 2016 NY Slip Op 4221**

THINKING OF CHARITY AS FAMILY

Although more than 80% of American households make charitable gifts each year, only a fraction of those donors think to include organizations as beneficiaries when structuring their estate plans. They may be unfamiliar with charitable bequest options or believe that family members need to receive the entire estate. Advisers might ask, as part of the estate planning process, whether there are charities the client would like to include in a will, living trust or beneficiary designation. For clients who are charitably inclined but hesitate because of family needs, the disclaimer and the contingent bequest are options. A disclaimer in favor of charity allows family members to decide whether all or part of the bequest is needed, or whether the assets should pass instead to the charity named as alternative beneficiary. A contingent bequest provides for charity to receive a portion of the estate if named beneficiaries predecease the testator. In either case, the value of the estate passing to charity qualifies for the estate tax charitable deduction [Code §2055(a)]. A bequest to charity can also be deferred during the life of a family member through a charitable remainder trust, charitable gift annuity or reserved life estate in a residence or farm. The Salvation Army would be happy to provide you with the appropriate disclaimer or contingent charitable bequest language, or with sample documents for other gift arrangements, such as charitable remainder trusts. Feel free to call our office.