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TOPIC: Tax Court Voids Gift of Decedent’s Interest in FLP and Includes Value in Decedent’s Gross Estate

A week before the decedent’s death, decedent’s son (Son), acting on his mother’s behalf, transferred certain cash and securities to a family limited partnership (FLP) in exchange for a 99% limited partnership interest. On the same date, Son, acting under a power of attorney, transferred his mother’s interest in the FLP to a charitable lead annuity trust (CLAT). The U.S. Tax Court determined that the decedent’s estate underreported the value of its gross assets by failing to include the amounts transferred to the FLP because (1) the transferred assets were subject to an implied agreement under which the decedent “retained the possession or enjoyment of the transferred property” and (2) the decedent’s FLP interest was transferred less than three years before her death. The Tax Court also determined that, under California law, Son’s transfer of the decedent’s FLP interest was void because her power of attorney did not authorize Son to make gifts in excess of the annual federal gift tax exclusion amount, making the value of the FLP interest includible in the decedent’s estate. See *Estate of Powell v. Commissioner*, 148 T.C. No. 18 (2017).

[View Estate of Powell v. Commissioner, 148 T.C. No. 18 \(2017\)](#)

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