

IRS INVALIDATES DISCOUNTS USED IN AN FLP FORMED SHORTLY BEFORE DEATH

The recent Tax Court case *Estate of Anne Milner Fields v. Commissioner* underscores the risks involved when transferring assets to a family limited partnership or family limited liability company close to death. Approximately a month before Anne Milner Fields died, her great-nephew and agent under her durable power of attorney transferred \$17 million of assets to an FLP with himself as the general partner. After her death, Anne's estate discounted the FLP value on her estate tax return for lack of control and lack of marketability. The IRS argued that the full asset value should be included in her estate due to retained control and economic benefits. The court agreed, citing Internal Revenue Code § 2036(a), which mandates that transferred assets remain in an estate's gross value if the decedent retains economic benefits or control.

The court rejected claims that the partnership had non-tax motivations, finding insufficient evidence that it was set up for asset management or protection from elder abuse. Additionally, the estate was penalized under § 6662(a) for underreporting its tax liability.

This ruling serves as a reminder that FLPs and LLCs must have legitimate, documented purposes beyond tax reduction to avoid § 2036 inclusion. Furthermore, if the decedent retains control or benefits from transferred assets, their full value may still count in estate tax calculations.