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## **Tax Court Cases Underscore Importance of Control Issues**

Two recent Tax Court cases underscore the importance of the control of assets.

In *Christine and Albert Hackl v. Commissioner* (118 TC No. 14), the Tax Court ruled that gifts of limited liability company (LLC) interests did not qualify for the annual gift tax exclusion because the recipients did not have "immediate and unconditional rights to the use, possession, or enjoyment of property or income from the property."

Therefore, the court held, the gifts were gifts of future interest and, thus, not qualified for the gift tax exclusion.

The Tax Court decision hinged on language in the operating agreement governing the interests given to the recipients. The operating agreement prohibited members from withdrawing from their capital accounts, from selling their interests to outsiders, and from compelling distributions. The agreement also gave broad powers to Albert Hackl as manager of the LLC.

The court summarized the effect of the operating agreement as "foreclosing ability of the donees presently to access any substantial economic or financial benefit" from the units.

In *Estate of Thompson v. Commissioner* (T.C. Memo 2002-246), the Tax Court stated that "nothing but legal title changed in the decedent's relationship to his assets" as the result of the creation of two family limited partnerships (FLPs). Therefore, the court ruled that the full value of those assets was includable in the decedent's gross estate.

In this case, Theodore Thompson had transferred substantially all of his cash, securities, and loans from family members into two FLPs. The trusts, however, distributed funds to Thompson, which he used to continue to make gifts to his children. The trusts also made loans to family members and failed to actively seek repayment.

Furthermore, Thompson and his children agreed, prior to forming the trusts, that his needs would continue to be met.

These two cases underscore the importance of control — and lack of control — of assets when planning gifts and trusts.

