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Tax Valuation E-Flash

Christine and Albert Hackl v. Commissioner, 118 T.C. No. 14, March 27, 2002

Based on a review of the LLC's Operating Agreement, the Tax Court ruled that gifts of limited liability company interests were gifts of future interests and did not qualify for the annual gift tax exclusion.

Christine and Albert Hackl made gifts of units of Treeco, LLC, a limited liability company formed to acquire real estate and operate a tree farm. The goal for this entity was long-term

The IRS argued that the gifted units did not have "immediate and unconditional rights to the use, possession or enjoyment of property or income from the property."

appreciation and no short-term profits or cash flows were expected. Although the taxpayers made gifts in 1995 and 1996, the 1995 gift tax return had been accepted as filed and the 1996 gifts were the only ones being challenged.

The taxpayers argued that the gifts were present interest gifts for several reasons, including the assertion that the recipients had the same rights in the gifted LLC units as Mr. and Mrs. Hackl had in the LLC units they retained.

The IRS argued that the gifted units did not have "immediate and unconditional rights to the use, possession or enjoyment of property or income from the property."

The Tax Court based its decision primarily on the terms of the LLC Operating Agreement. The terms discussed by the Tax Court included the authority given to Mr. Hackl as manager, the inability of members to withdraw their capital accounts, the inability of members to sell interests to outsiders, and the inability of members to compel distributions.

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This brief summary is not intended to substitute for reading the full text of the case (available from the link below), particularly the analysis of the impact of the terms of the Operating Agreement, the discussion of prior case law, and the interpretation of the applicable regulations.