Tort Claim, Will Contest Have Same Limitation Period

In re Estate of Ellis, No. 1-07-1793

In 1964, Grace Ellis executed a will naming Shriners Hospital for Children as a contingent beneficiary. Ellis, who never married and had no children, had a new will drafted in 1999, naming James Bauman as sole beneficiary and executor.

Ellis died in 2003 at age 86, leaving a multimillion dollar estate. Two cousins filed suit but subsequently settled with Bauman.

Nearly three years after the will was admitted to probate, Shriners filed suit, claiming that Ellis lacked testamentary capacity and alleging undue influence and tortious interference with an inheritance expectancy by Bauman. The court dismissed the matter, citing the state's six-month statute of limitations. Shriners appealed, arguing that the limitation statute did not expressly refer to tort claims.

The Illinois Appeals Court found that reasoning “implausible,” saying it would bar will contests but not the same allegations when called intentional interference. Allowing Shriners to proceed would “permit the grounds for a will contest to be litigated years after the will was admitted to probate,” which the court found to be contrary to the legislative intent.

Beneficiary’s Failure to Disclaim Remainder Interest Costly to Estate

Estate of Christiansen v. Comm’r., 130 TC No. 1

Helen Christiansen left her entire estate to her daughter, Christine Hamilton, but provided that if Hamilton disclaimed any portion, 75% of the disclaimed amount would pass to a charitable lead annuity trust and 25% would pass to Christiansen’s foundation.

Following Christiansen’s death, Hamilton disclaimed any amount in excess of $6,350,000. The estate tax return put Christiansen’s gross estate at $6.5 million.

The gross estate was eventually determined to be $9.6 million. The estate argued that the increase merely boosted the charitable deduction.

A partial disclaimer is permitted [Code §2518(c)(1); Reg. §25.2518-3(a)] but is not effective unless the disclaimant also disclaims any remainder interest in the property. Because Hamilton had not disclaimed her right to receive the assets at the end of the lead trust, the estate is not entitled to a deduction for any portion passing to the lead trust, ruled the Tax Court.

The court rejected the IRS argument that the disclaimer adjustment clause was against public policy because it discourages the IRS from examining estate tax returns. “We are hard pressed to find any fundamental public policy against making gifts to charity – if anything the opposite is true,” said the court, which upheld the estate’s increased charitable deduction for the disclaimed portion passing to the foundation.

Trust Too Old to Reform

Letter Ruling 200818003

An inter vivos trust created in 1954 was to pay income to the grantor’s wife, children and grandchildren before eventually distributing the assets to a charity selected by the trustee. The wife and children have died. A local court granted the trustee’s reformulation request to establish a charitable remainder trust that will pay a 5% unitrust amount in equal shares to the three surviving grandchildren for their joint lives.
The IRS noted that prior to the Tax Reform Act of 1969, there were no substantial restrictions on the deductions available for income and remainder interests passing to charity. Code §§664, 2055(e) and 2522(c) were added, requiring charitable interests to be in the form of a charitable remainder trust or pooled income fund to qualify for a deduction. The rules applied to gifts made after July 31, 1969, or decedents dying after 1969.

Post-death reformations are permitted under Code §2055(e)(2), added in 1974, and inter vivos reformations are allowed under Code §2522(c)(4), added in 1984. The reformation provisions apply only to transfers made after 1969, said the IRS. In order to be a charitable remainder trust, a trust must meet the definition of and function exclusively as a charitable remainder trust from its creation [Reg. §1.664-1(a)(4)]. Because this trust was created prior to 1969, it has not operated as a charitable remainder trust and cannot be reformed, the IRS ruled.

**CRT Trustee Can Assist Charities**

*Letter Ruling 200813006*

A couple plans to create a charitable remainder unitrust for their joint lives, from which they are to receive at least 25% of the annual unitrust amount. The remaining 75% will be allocated at the discretion of a special trustee among the husband, wife and charity. Although the donors can name and replace the special trustee, they cannot serve themselves. The special trustee cannot be related or subordinate to the spouses [Code §672(c)].

The IRS ruled that the couple’s ability to replace the special trustee will not cause them to be treated as owners of the trust or prevent the unitrust from qualifying under Code §664(d)(2). The IRS did not address the issue in the ruling, but has previously said that donors of an inter vivos trust may claim an income tax charitable deduction only for charity’s remainder interest, not for the value of any income from the trust (e.g., Letter Ruling 200108035).

**No Goodwill Deduction for Doctors**

*Derby, et al v. Comm’r., TC Memo. 2008-45*

A physicians’ group sold their practices to the non-profit foundation of a hospital. The doctors claimed charitable deductions on their personal returns for the difference between the sale price and the appraised fair market value of their practices.

A taxpayer claiming a charitable deduction for a “dual character” transaction must show “he purposely contributed money or property in excess of the value of any benefit received” [*U.S. v. Am. Bar Endowment*, 477 U.S. 105 (1986)]. The doctors argued that they had received a higher offer from a for-profit HMO for their practices, but that the foundation was prohibited by federal law from paying for goodwill.

The Tax Court noted that the arrangement with the foundation gave each doctor a signing bonus, more autonomy and participation in management – benefits they would not have received with the HMO. In addition, they did not have to sign non-compete agreements. These intangible benefits were of “substantial value” to the doctors, said the court, adding that while difficult to value, they could not be ignored in determining any quid pro quo.