

## **TAX COURT CASE UPDATE**

### **FCG Valuation Case E-Flash**

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### **Citation:**

*Estate of Axel O. Adler, Deceased, Anna Axina Adlerbert, Administrator, Petitioner v. Commissioner of Internal Revenue, Respondent*, T.C. Memo 2011-28, January 31, 2011.

### **Overview:**

Although the decedent executed grant deeds transferring undivided interests in his property to his children, the Tax Court determined the transfers were testamentary in nature, and, therefore, the value of his 1,100 acre property in Carmel, California, was includable in his estate under IRC §2036(a)(1).

### **The Facts:**

Axel O. Adler (the “Decedent” or “Mr. Adler”) owned property (“Rancho Aguila” property) consisting of approximately 1,100 acres in Carmel, California. On December 8, 1965, Mr. Adler executed a grant deed that transferred undivided one-fifth interests in the Rancho Aguila property to each of his children as tenants in common. He received no consideration for the transfer.

However, the deed expressly indicated that Mr. Adler was to retain “the full use, control, income and possession of [Rancho Aguila] and every part thereof for and during” his natural life. The Decedent continued to live in the Rancho Aguila property, while none of the children did. Mr. Adler paid no rent to the children and was free to alter, improve, or maintain the property as he saw fit without consulting his children.

In 1991, one of the Decedent’s daughters transferred her interest back to her father, although neither Mr. Adler nor his daughter executed the quitclaim deed. After Mr. Adler died on June 20, 2004, the daughter executed a grant deed to her father’s estate to complete the 1991 transfer. Ultimately, the estate asserted this transfer indicated the Decedent only owned a one-fifth tenant-in-common interest at his death, not the entire property.

### **Conclusion:**

Based on the facts as presented, the Tax Court determined the 1965 transfers were testamentary (i.e., transfers made in a will, which would only come into effect *after* death). In particular, the Tax Court noted that Mr. Adler controlled, retained enjoyment of, and maintained the Rancho Aguila property. Because the transfers were testamentary and because Mr. Adler retained possession or enjoyment, the Tax Court determined that the full, undiscounted value of the Rancho Aguila property was includable in Mr. Adler’s estate under IRC

§2036(a)(1). Therefore, the May 2005 transfer to his estate (which would have resulted in the estate owning an undivided one-fifth interest and the interest likely would have been valued with fractional interest discounts) was irrelevant.