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Chapter 5
Lloyd Leva Plaine Distinguished Lecture
What's Under The Robe?

Judge Maurice B. Foley
United States Tax Court
Washington, D.C.

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Judge Maurice B. Foley
United States Tax Court
Washington, D.C.

Judge Maurice Foley - Judge Foley was appointed to the United States Tax Court by President William J. Clinton on April 9, 1995; reappointed by President Barack Obama on November 25, 2011; and elected as Chief Judge for a 2-year term effective June 1, 2018 and re-elected February 21, 2020 for a second 2-year term effective June 1, 2020. He received a Bachelor of Arts degree from Swarthmore College; a Juris Doctor from University of California, Berkeley School of Law; and a Masters of Law in Taxation from Georgetown University Law Center. Prior to the appointment to the Court, he was an attorney for the Legislation and Regulations Division of the Internal Revenue Service, Tax Counsel for the United States Senate Committee on Finance, and Deputy Tax Legislative Counsel in the U.S. Treasury's Office of Tax Policy. Judge Foley is an adjunct professor at American University Washington College of Law, the University of Colorado Law School, UC Hastings College of the Law, and the University of San Diego, School of Law.

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I. Core Materials

A. McCord v. Commissioner, 120 T.C. 358 (2003), *rev'd sub nom.*, Succession of McCord v. Commissioner, 461 F.3d 614 (5th Cir. 2006)

- *Background:* Petitioners' family owned a limited partnership. In January 1996, petitioners executed an assignment agreement (*i.e.*, specifying in dollar amounts the net fair market value of interests) that irrevocably transferred their limited partnership interests to GST trusts, their sons, and charitable organizations. The Commissioner contended that the petitioners understated the fair market value of their donated interests. Judge Foley was the trial judge, and the case was referred to Court Conference for review.
- *Holdings:* The Court reviewed opinion rejected the taxpayers' use of a defined value formula clause and, relying on the donees' March 1996 confirmation agreement, sustained respondent's determinations.

B. Succession of McCord v. Commissioner, 461 F.3d 614 (5th Cir. 2006)

- The Fifth Circuit reversed the Tax Court; upbraided it for employing a novel approach neither advanced nor briefed by either party; rebuked it for improperly relying on the donees' post-gift confirmation agreement; emphasized that it "violated the firmly-established maxim that a gift is valued as of the date that it is complete ... [and] that subsequent occurrences are off limits"; and stated "we cannot improve on the opening sentence of Judge Foley's dissent:

Undaunted by the facts, well-established legal precedent, and respondent's failure to present sufficient evidence to establish his determinations, the majority allow their olfaction to displace sound legal reasoning and adherence to the rule of law."
Succession of McCord, 461 F.3d at 626.

II. Supplemental Materials

A. Judicial Nomination Hearings

- Nomination of Renato Beghe for United States Tax Court, 102nd Congress (1991-1992), PN85, 102nd Cong. (1991), <https://www.congress.gov/nomination/102nd-congress/85>.
- Nomination of Carolyn P. Chiechi for United States Tax Court, 102nd Congress (1991-1992), PN1304-1, 102nd Cong. (1992), <https://www.congress.gov/nomination/102nd-congress/1304/1>.
- Nomination of David Laro for United States Tax Court, 102nd Congress (1991-1992), PN1304-2, 102nd Cong. (1992), <https://www.congress.gov/nomination/102nd-congress/1304/2>.

B. Judge Foley's Estate and Gift Tax Cases

1. §651-652 and 661-662: Simple and Complex Trusts
 - Steingold v. Commissioner, T.C. Memo. 2000-225, 80 T.C.M. (CCH) 95, *aff'd*, 13 F. App'x 209 (4th Cir. 2001)
 - *Background*: The issues were whether the notice of deficiency relating to petitioner's 1993 return was timely and whether petitioner was liable for tax relating to undistributed trust income.
 - *Holdings*: The notice was not timely and taxpayer was not required to report undistributed trust income.
2. §2031: Gross Estate
 - Est. of Goldman v. Commissioner, T.C. Memo. 1996-29, 71 T.C.M. (CCH) 1896
 - *Background*: The issue was the includability of the value of funds paid to recipients of checks drawn on decedent's checking account by her attorney in fact.
 - *Holding*: Value of funds was includable.
 - Est. of Fontana v. Commissioner, 118 T.C. 318 (2002)
 - *Background*: The issue was whether stock owned outright by Mr. Fontana must be aggregated with stock over which he possessed a testamentary general power of appointment.
 - *Holding*: Stock subject to beneficiary's general power of appointment had to be aggregated with stock owned outright.
 - Est. of Newberger v. Commissioner, T.C. Memo. 2015-246
 - *Background*: The issues were the values of three pieces of fine artwork.
 - *Holdings*: The fair market values were \$10 million for the Picasso (rather than \$5 million as claimed by the estate); \$800,000 for the Motherwell (as claimed by the estate); and \$500,000 for the Dubuffet (as claimed by the estate).
3. §2033: Decedent's Interest in Property
 - Est. of Goldman, 71 T.C.M. (CCH) 1896
 - *Supra*
4. §2036: Transfers with Retained Life Estate
 - Est. of Schauerhamer v. Commissioner, T.C. Memo. 1997-242, 73 T.C.M. (CCH) 2855
 - *Background*: The issue was whether the value of certain property transferred to family limited partnerships was includable.
 - *Holding*: The value of the property was includable.
 - Est. of Kelly v. Commissioner, T.C. Memo. 2012-73, 103 T.C.M. (CCH) 1393
 - *Background*: The issues were whether the value of property transferred to family limited partnerships was includable and whether the value of the family limited partnership interests transferred to decedent's heirs was includable.
 - *Holding*: The value of the property was not includable.
 - Stewart v. Commissioner, T.C. Memo. 2006-225, 92 T.C.M. (CCH) 357, *vacated and remanded sub nom.*, Est. of Stewart v. Commissioner, 617 F.3d 148 (2d Cir. 2010)
 - *Background*: The issues were whether the value of property was includable and whether decedent's estate was entitled to deductions relating to various claims and property taxes.

- *Holdings*: Value of the 49% interest transferred to decedent's son was includable and the estate was not entitled to deductions.
 - *On appeal*: The Second Circuit stated:
 [T]he Tax Court's finding that the terms of the implied agreement between Decedent and Brandon provided that Decedent would enjoy 100% of the substantial economic benefit of Brandon's 49% undivided interest in the Manhattan property was clearly erroneous ... [o]n remand, the Tax Court should make the factual determinations necessary to determine the amount of the net income from Brandon's 49% interest enjoyed by Decedent. Then the Tax Court can calculate the “corresponding proportion” of “the value of the entire property,” and include it in the Decedent's gross estate under §2036. Est. of Stewart, 617 F.3d at 162.
 - *On remand*: Stipulated decision that there was no estate tax due.
5. §2040: Joint Interests
- Est. of Harden, T.C. Memo. 1996-488, 72 T.C.M. (CCH) 1139
 - *Background*: The issues were whether the notice of deficiency was issued prior to the expiration of the 3–year limitations period; whether the value of joint tenancy property was includable; whether petitioner is entitled to deduct \$363,458 and \$306,563 relating to two promissory notes; and whether petitioner is entitled to deduct \$300,000 as a theft loss.
 - *Holdings*: The notice was issued prior to the expiration of the limitations period; the value of the joint tenancy property was includable; petitioner was not entitled to a deduction relating to the notes; and petitioner was entitled to a deduction for a theft loss.
6. §2042: Proceeds of Life Insurance
- Est. of Bates v. Commissioner, T.C. Memo. 2012-314
 - *Background*: The issues were whether decedent's estate was entitled to various deductions and whether the value of life insurance proceeds was includable.
 - *Holdings*: Decedent’s estate was not entitled to the deductions and the value of life insurance proceeds was includable.
7. §2053: Deductions from Gross Estate
- Sub Issue: Promissory Notes
 - Harden, 72 T.C.M. (CCH) 1139
 - *Supra*
 - Sub Issue: Attorney Fees
 - Est. of Baird v. Commissioner, T.C. Memo. 1997-55, 73 T.C.M. (CCH) 1883
 - *Background*: The issue was whether petitioner was entitled to deduct \$368,100 paid for attorney's fees.
 - *Holding*: The attorney's fees were deductible.
 - Sub Issue: Settlement Payment
 - Bates, T.C. Memo. 2012-314
 - *Supra*

- Sub Issue: Beneficiaries' Expenses to Protect Interests
 - Bates, T.C. Memo. 2012-314
 - *Supra*
- 8. §2054: Losses
 - Harden, 72 T.C.M. (CCH) 1139
 - *Supra*
 - Est. of Heller v. Commissioner, 147 T.C. 370 (2016)
 - *Background*: The issue was whether losses relating to a Ponzi scheme were deductible.
 - *Holding*: The losses were deductible.