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*Estate of Anna Mirowski, Deceased, Ginat W. Mirowski and Ariella Rosengard, Personal Representatives, Petitioners. v. Commissioner, T.C. Memo 2008-74, March 26, 2008.*

The Facts:

Mrs. Mirowski was a resident of Owings Mills, Maryland, at the time of her death on September 11, 2001. Mrs. Mirowski's spouse, Dr. Michael Mirowski, had invented an internal implantable defibrillator during the late 1970's which was successfully implanted into a human recipient in 1980. Dr. Mirowski held various patents on his implantable cardioverter defibrillator (ICD) and entered into an exclusive license agreement with respect to ICD patents, under which he had the right to receive approximately 73% of the royalties paid for the use of the patents. During his lifetime, Dr. Mirowski received modest royalties under this license agreement. Upon the death of Dr. Mirowski in March of 1990, the ICD Patents, his interests in the license agreement and the remainder of his assets (less \$600,000) passed to Mrs. Mirowski. After the death of Dr. Mirowski, sales of ICD's increased significantly which resulted in royalties rising from thousands of dollars to millions of dollars a year.

Mrs. Mirowski had maintained a long history of making gifts and philanthropic contributions to her family, friends and others and during the ten year period prior to her death, this trend continued to and for the benefit of her three daughters, grandchildren and others. Mrs. Mirowski paid all applicable gift taxes as necessary.

Mrs. Mirowski managed and tracked her own investments and accounts until December 26, 1998, when she opened an account with Goldman Sachs and began to deposit cash and securities into this account (still having multiple accounts outside of Goldman Sachs). She met or spoke with Goldman Sachs representatives three to five times per month in order to stay updated on her accounts. In early 2001, all of the remainder of Mrs. Mirowski's accounts were consolidated with Goldman Sachs.

In May of 2000, Mrs. Mirowski was introduced to the idea of an LLC, and thereafter in August of 2000 met with her attorney to discuss formation of an LLC. On August 31, 2000, Mrs. Mirowski's attorney sent a draft copy of the articles of organization and operating agreement for the Mirowski Family Ventures, LLC (MFV) to Mrs. Mirowski and her daughters.



One year later, after a family gathering in Delaware, in August of 2001, Mrs. Mirowski's attorney finalized the documents for the signature Mrs. Mirowski, which she signed and executed on August 27, 2001. Mrs. Mirowski was aware of certain tax benefits as a result of the formation of MFV, however, MFV had legitimate non-tax purposes including, (1) joint management of the family's assets by Mrs. Mirowski's daughters and eventually her grandchildren, (2) maintenance of the bulk of the family's assets in a single pool of assets in order to allow for investment opportunities that would not be available if Mrs. Mirowski were to make a separate gift of a portion of her assets to each of her daughters or to each of her daughter's trusts, and (3) providing for each of her daughters and eventually each of her grandchildren on an equal basis. On September 1, 2001, Mrs. Mirowski made an arm's length transfer to MFV of certain property, including the ICD patents and her 51.09 percent interest in the ICD Patents license agreement in exchange for a 100% interest in MFV. On September 5, 2001, she made another arm's length transfer to MFV consisting of securities valued at \$60,578,298.08 from her Goldman Sachs account. On September 6 and 7, 2001, Mrs. Mirowski made additional arm's length transfers of securities and cash valuing \$1,525,008.80 to MFV from her Goldman Sachs account. Mrs. Mirowski retained substantial personal assets that were not transferred to MFV valued at approximately \$7,598,000 (including \$3.3 million in cash and cash equivalents) and Mrs. Mirowski's home.

Mrs. Mirowski then made a gift to each of her daughter's trusts of a 16% interest in MFV on September 7, 2001. Mrs. Mirowski was aware of the substantial gift tax associated with the gifts. At no time was there a concern on how Mrs. Mirowski would pay the associated gift taxes as she had ample assets to draw from (including future royalty payments to be received).

Mrs. Mirowski had been diagnosed with diabetes in 1989, and had been undergoing treatment for a foot ulcer, which developed in January of 2001, from March 2001, through August 2001. On August 31, 2001, Mrs. Mirowski was admitted to the hospital to receive treatment for her foot ulcer. It was believed, by Mrs. Mirowski, her daughters and her physicians that she would be returning home once the treatment was completed. Mrs. Mirowski's condition rapidly deteriorated on September 10, 2001, and Mrs. Mirowski passed away on September 11, 2001.

#### The Arguments and Findings:

The issues for decision were whether any of the assets owned by MFV are includable in Mrs. Mirowski's gross estate under Sections 2036(a), 2038(a)(1) or 2035(a). The Court determined that they must address the following: (1) was there a transfer of property by Mrs. Mirowski, (2) If so, was such a transfer a bona fide sale for an adequate and full consideration in money or money's worth, and (3) if it was not a bona fide sale, did Mrs. Mirowski retain possession or enjoyment of, or the right to the income from the property transferred within the meaning of section 2036(a)(1) or did she retain the right to



designate the persons who shall possess or enjoy the property transferred or the income therefrom within the meaning of section 2036(a)(2).

The respondent argued that the exception under section 2036(a) does not apply to Mrs. Mirowski's estate because there was no legitimate non-tax purpose for the formation and subsequent funding of MFV and that there was no bona-fide sale of assets by Mrs. Mirowski. Respondent further argued that (1) Mrs. Mirowski did not retain sufficient assets for her anticipated financial obligations, (2) MFV lacked any valid functioning business operation, (3) Mrs. Mirowski delayed forming and funding MFV until her health had begun to fail, (4) Mrs. Mirowski sat on both sides of the transfers to MFV, and (5) after Mrs. Mirowski's death, MFV made distributions of \$36,415,810 to her estate that was used to pay Federal and State transfer taxes, legal fees and other estate obligations. The Court found that respondent's first three arguments were without foundation and they were rejected. The Court found that respondent's fourth argument ignored the fact that Mrs. Mirowski fully funded MFV and her daughters' trusts were the recipient of a 16% interest in MFV (not individual assets), and this argument was rejected. In response to argument five, the Court found that no one anticipated or expected Mrs. Mirowski's death to occur so suddenly, as all accounts from her physicians expected her to recover fully. This argument was also rejected.

In regard to the gifts made by Mrs. Mirowski to her children, respondent argued that Mrs. Mirowski retained possession or enjoyment of, or right to income from the transferred property. The estate disagreed with this argument. The Court reviewed carefully the wording of MFV's operating agreement and disagreed with the respondent's contention that Mrs. Mirowski retained control over the gifts to her children's trusts as her role as general manager did not afford her control over when distributions could take place for each taxable year. The Court found that at the time of Mrs. Mirowski's death there was not express agreement in MFV's operating agreement or elsewhere that she retain enjoyment, possession, or enjoyment of or the right to income from the 16% interests she gifted to her daughter's trusts. The Court considered all of the parties' arguments and concluded that Sections 2036(a) and 2038(a)(1) did not apply to Mrs. Mirowski's transfers to MFV and therefore, Section 2035(a) did not apply to Mrs. Mirowski's gifts of 16% interests to her daughter's trusts.

#### Parting Thoughts:

I found this to be one of the more interesting cases to read, not just for the facts about the Estate but it also gave background into the Mirowski family and the adversity they had to overcome migrating from Poland to the United States. I believe that it also illustrates that when things are documented properly and fully supported, even transfers shortly before an unexpected death can survive a challenge.