

LIMITED PARTNERSHIP GIFTING - A TWIST
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There are some recent cases regarding gifts of partnership interests that did not qualify for the gift tax annual exclusion or a charitable gift deduction where it seems fairly clear they should have been allowed.

In the first case, the parents transferred limited partnership interests to each of their adult children over a five year time period. Collectively, the children held a majority interest in the partnership even after the first year of gifting. The parents utilized the gift tax exclusion each year. The IRS' position was that these gifts were future interest gifts because the partnership agreement restricted transfers to third parties. The taxpayer took the position that the gift was a present interest because they could freely transfer interests between partners and each donee had immediate rights to the income and could freely assign their income rights to third parties. The Tax Court agreed with the IRS stating that the donees had no right to present enjoyment of the property primarily due to the transfer restrictions.

The lesson to be learned here is to make the restrictive language in a partnership agreement for the transfer of interests a right of first refusal instead of a complete transfer restriction. Additionally, there were no time restrictions on the transfer in their agreement. Having a time period for the transfer to occur may have also made a difference to the court.

The second case involved a Family Limited Partnership that was gifting percentages of the FLP interest to charity and claimed deductions totaling over one million dollars. Because the gifts were over \$5,000, an appraisal had to be completed. The taxpayer had their CPA prepare a valuation and had an older valuation by a valuation company. The requirements of the appraisal under Sec 170. Reg 1.170A-13(c)(i) are that the appraisal must be completed not earlier than 60 days prior to the date of the contribution and completed by the due date of the return. The appraiser must be qualified, hold themselves out to the public as an appraiser for that type of property and include certain statements regarding the appraisal process. The court found the appraisals were inadequate and denied the deductions.

The lesson to be learned from this case is to have a qualified appraiser sign off on the gifting transaction, be it for a charitable deduction or a gift of an interest to a family member. Both require the appraisal and are specific as to what needs to be included in such an appraisal. If you are going to the trouble to make the gift, make it correctly.