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## Tax Valuation E-Flash

### Kerr v. Commissioner, US Court of Appeals for the Fifth Circuit, No. 00-60903, June 10, 2002

The Fifth Circuit upheld a Tax Court ruling (*Baine P. and Mildred C. Kerr v. Commissioner*, 113 T.C. No. 30, December 23, 1999) that transfers to a GRAT were limited partnership interests, not assignee interests. A discount for lack of marketability could be applied, however, because section 2704(b) didn't apply.

In 1993 Baine and Mildred Kerr formed two Texas family limited partnerships. Mr. and Mrs. Kerr contributed all the capital and were the general partners, but immediately assigned a portion of each partnership to the children. The partnership agreements restricted dispositions of partnership

The IRS claimed that the liquidation restrictions in the partnership agreements were applicable restrictions under section 2704(b).

interests and the ability to dissolve the partnerships. In 1994, Mr. and Mrs. Kerr each created a GRAT, transferring to it a 44.5 percent limited partnership interest. The Kerrs also transferred additional class B limited partnership interests to each child.

The Kerrs filed 1994 gift tax returns reporting the transfers to the GRAT and their children. The IRS challenged this return, disputing the value of the transfers. The IRS claimed that the liquidation restrictions in the partnership agreements were applicable restrictions under section 2704(b) and thus should have been disregarded in the valuations.

The Tax Court held that the Kerrs transferred limited partnership interests to the GRATs, and rejected the argument that they transferred only assignee interests. The Tax Court did agree, however, that section 2704(b) did not apply since the partnership agreements' liquidation restrictions weren't applicable restrictions under section 2704(b)(3)(B) and reg. section 25.2704- 2(b).

The Fifth Circuit affirmed that the Tax Court properly held the dissolution and liquidation provisions in the partnership agreements were no more restrictive than the limitations under Texas law, and weren't applicable restrictions.

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