M E M O R A N D U M

From: Richard Malamud To: Files - Joan Client Date: February 12, 200X

Facts:

Your father transferred assets into your name and into your social security number. The purpose of the transfer was solely for his convenience and it was not intended that the assets were to be yours. He was simply trying to "hide" them until you could transfer them back to him in a few years.

Issue:

Whether for federal income tax purposes, you should pay tax on the income earned from your father's property.

Rule:

In order to transfer tax liability, a transferor must transfer the income producing property. See Bitker, *Federal Income Taxation of Individuals*, ¶ 31.3.

In **Lucas v. Earl** 281 U.S. 111 (1930), the Supreme Court stated: "Taxation is not so much concerned with the refinements of title as it is with actual command over the property..." Thus, the form of a transaction is not controlling where the substance of the transaction indicates that another tax treatment is proper.

In **Comm. v. Sunnen** 333 U.S. 591 (1948) the court held that an inventor was taxable on royalties earned on licenses transferred to his wife because of the control he kept over the payment of the royalties. Thus, the form will not control if the transferor retains control over the property.

In **Charles Blackmer Humphrey II** 28 TCM 492 (1969), the taxpayer transferred stock to his son. However, there was an understanding between the father and son that the stock was to remain subject to the father's complete control, that the dividends from the stock would be disposed of as the father might direct, and that the son would re-transfer the stock to the father as the father might request. The Tax Court held that the father remained the "true owner of the stock and that it was he, rather than (his son) who was really the recipient of the dividends therefrom."

Analysis:

Here the sole issue is who should pay tax on the assets which are in the name of the child, but which in substance still belongs to the parent. Assuming that your father continues to maintain complete control over the income and the property transferred, the Humphrey case indicates that your father continues to be liable for the tax on the income.

Conclusion:

You father remains liable for paying tax on the income from the property (temporarily) transferred to you.

Suggestion:

Since the assets are now listed in your name and since you will receive a Form 1099 for any interest or dividends, you will be required to report the income on your individual tax return. However, you may list that income as nominee income and report that it will be taxed on your father's return. To help you in case of an audit by the IRS, you should tell your father the amount to report on his return.