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TITLE: When a Gift is Not a Gift: Property Transfers to Family Caregivers

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PANEL: Looking a "Gift" Horse in the Mouth: When a "Gift" Is Not a Gift

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When a Gift is Not a Gift: Property Transfers to Family Caregivers

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Taxation of Caregiver Transfers

- Taxable income to caregiver
- Enhancement of Social Security benefits
- Possible entitlement to Medicare benefits
- Usually no offsetting deduction for care recipient

Contrast: gifts are tax-free (inheritances also)

Dieter Case* - Facts

- Alberta was cared for by her daughter Maureen, and then by her daughter-in-law, Mary Dieter

- Mary lived in Alberta's home, along with Mary's husband and Mary's sons

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* 2003-1 U.S.T.C. ¶ 50,439 (D. Minn. 2003)

Dieter Case - Facts

- For 6 years, Mary cooked, bathed, did laundry, and handled finances for Alberta
- Mary and her family paid nothing for housing and groceries
- During this 6-year period, Alberta's home was sold and the whole family moved into a smaller home that did not have stairs

Dieter Case - Facts

- Mary located the new home
- When Alberta moved to a nursing home, Maureen challenged Mary and her family's right to continued residence in Alberta's new home
- Special conservator issued a Release that gave title to Alberta's home to Mary's son

Dieter Case - Holding

- Court held that Mary was taxable on the value of the home

- There was no written caregiver agreement, but the Release that granted title to Alberta's home specified that Mary was "entitled to compensation for care . . . to Alberta"

Coverage of Long-Term Care

- No broadly available coverage of long-term care costs
- Medicare coverage is limited to 100 days of skilled care
- Private long-term care insurance is costly and requires significant pre-planning
- Most such care is family-provided
- Institutional care covered by Medicaid

Medicaid Benefits

- Eligibility is tied to assets and income
- Common strategy: give away assets
- Penalty for uncompensated transfers =

  Transferred Amount ÷ Private Pay Rate = Number of Months ***Not*** Eligible for Benefits, <u>starting when the transferor would otherwise be eligible</u> (Deficit Reduction Act, effective Feb. 8, 2006)

Medicaid Benefits

- But caregiver payments are compensated transfers, so <u>no</u> penalty applies
- Regular payments must be comparable to caregiver agency rates
- Lump-sum = Hourly wage rate × hours worked per week × 52 weeks × care recipient's life expectancy