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Gudie Illustrates the Risks Faced by Fiduciaries

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One of the most basic reasons to have a Will is to name an executor. The executor gathers and manages assets, administers the estate, pays bills, pays taxes, and ultimately distributes the estate assets to the decedent's beneficiaries. The "paying taxes" part of the job can be difficult. People don't like to pay taxes. Also, if there are substantial non-probate assets, or different beneficiaries sharing disproportionately in the estate, the allocation of taxes among the beneficiaries can be a very significant issue. The executor also is responsible for dealing with tax authorities, not always a desirable job.

These types of issues came to a head in the recent Tax Court case of *Gudie v Comm'r*. Decedent, a California resident, held her assets in a living trust (ie, non-probate asset) with her two nieces as successor co-trustees. During her lifetime, decedent entered into an unusual private annuity transaction, selling her assets to her nieces in exchange for their promise to pay her an annuity. Although no payments related to the transaction ever were made, decedent's estate tax return reported that the decedent's $8 million liability from the private annuity transaction exceeded the decedent's $7 million in assets, so no estate tax was due. Perhaps not surprisingly, the IRS challenged this position, and sent a deficiency notice to one of the nieces.

The niece raised the "wrong taxpayer" defense, arguing that, even though she had signed the estate tax return, she was only a co-trustee and had never been formally appointed as the executor of the decedent's probate estate, so she was not the proper party to be notified of the deficiency. Again unsurprisingly, the Tax Court rejected this argument, and denied the niece's motion to dismiss the case. The court found that the niece was a "statutory executor" under the tax rules and was the proper person to receive the deficiency notice.

This case highlights some of the risks faced by fiduciaries of trusts or estates. The successor trustee in this case attempted a weak argument to try to avoid the alleged tax deficiency, and lost. The estate administration process is often complicated and needs to be attended to carefully.

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