

# Put it in writing

Anthony Olivo was a tax lawyer, with a JD from Rutgers University School of Law and an LLM in taxation from New York University School of Law. He practiced in private firms from 1976 until 1988, then began a solo practice.

Beginning in 1994, Olivo abandoned his law practice to take care of his elderly parents in their home. Olivo's father died in 1995, and the probate of his will was contentious. A sister was appointed administrator of the father's estate, though Oliva held a durable power of attorney from his mother.

Sometime in 1998, according to Olivo's testimony, another sister remarked that he was sitting around in the parents' home watching TV all day, getting free room and board. In fact, he was providing his mother with live-in aid. When he discussed the matter with his mother, she offered to pay him \$1,000 per week for his caregiving. Because he was concerned about her finances, they agreed, instead, that he would be paid \$400 per day, deferred until the mother's death. Unfortunately, the agreement never was reduced to writing.

When the mother died in 2003, Olivo was named the administrator of her estate. On the estate tax return, he claimed deductions for \$44,200 for his services as administrator, \$50,000 for his services as an attorney for the estate, \$5,000 for accountant's fees, and \$1,240,000 as a debt owed to him for the care provided pursuant to the 1998 agreement. IRS denied the deductions.

The Tax Court increased the allowable deduction for administrative expenses to \$52,223.28, in accordance with the statutory formula in New Jersey. Attorney's and accountant's fees were disallowed because Oliva could produce no time records to prove them. Most importantly, the debt for providing the mother with live-in care was not allowed either. Olivo testified that he "could have and should have" memorialized the agreement in writing, but was too distracted by his caregiving duties to think like a lawyer at that time. Without some witnesses or other corroborating evidence, the Court held that the estate had failed to establish the existence of a legal debt.

What's more, the Court also rejected any claim founded in *quantum meruit*. Under New Jersey law, services to a family member living in the same household are presumed to be gratuitous, unless shown otherwise by a preponderance of the evidence. "Children do provide gratuitous care for their aging parents," the Court noted.

(September 2011)

© 2011 M.A. Co. All rights reserved.