

Why Does the IRS Care What the Michael Jackson Name and Image is Worth?

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Playing out in a Los Angeles courtroom over the next few weeks is a battle between the Internal Revenue Service (IRS) and the executors of Michael Jackson's estate over how much value there was to his name and image at the time of the superstar's death in June of 2009. At stake could be as much as \$1 billion in estate taxes and penalties.

Many American families have had a trying time with an estate or trust, but few have had to fight with the government over a notice of estate tax deficiency. Not so Michael Jackson's family and its representatives who could have actually invited the battle by claiming a nominal value for the Michael Jackson name and image. An entertainment lawyer, John Branca, and a music industry executive, Michael McClain, as executors of the estate, filed an estate tax return, which asserted the value of the estate was only \$7 million on the date of death and included only \$2,105.00 for the value of the Michael Jackson name and his likeness. The IRS originally countered that those assets were worth \$434 million. The estate tax return, sometimes referred to by its form number, Form 706, is required whenever a decedent's gross assets have a total gross value more than a certain amount, whose sum has gradually increased over the years. The threshold for such a return in 2009 – the year Michael Jackson died – was \$3.5 million with a maximum tax rate of 45 percent.

Had the singer, who passed away at age fifty on June 25, 2009, lived but another six months and six days, he would have died in the only year in recent history in which there was no estate tax (although executors could choose to file a return and pay the tax

for 2010 decedents).

The executors justified the low value given to the Michael Jackson name and image with several reasons, including the harm to the entertainer's reputation from child abuse and child pornography allegations, that no marketing of the name or likeness had occurred for a number of years and that only approximately \$50 million had been earned from the sale of the name and image during the singer's lifetime.

The IRS took exception and issued a notice of deficiency, placing the value of the entire estate at \$1.3 billion, which included the assertion that the name and likeness were worth \$434 million at the time of death. As the trial proceeds, having begun last Monday, February 6, in U.S. District Tax Court before Judge Mark Holmes, the IRS is now taking the position that the value of those particular assets in 2009 was \$161 million and that the estate owes more than \$500 million in taxes and \$200 million in penalties. The estate has since stipulated to a valuation of the name and likeness of \$3 million, but the distance between the two values is why there is a trial going on. It is not difficult to comprehend the motivation of the government, which historically collects less than 1% of its total annual revenue from estate taxes.

One of the attorneys for the executors, Howard Weitzman, called Mr. Branca as his first witness; Judge Holmes has not yet determined which side bears the burden of proof. On Tuesday of last week a banker, David Dunn, who worked on trying to restructure Jackson's debt, was called by the estate as a witness and Wednesday saw testimony from Vincent Chieffo, an entertainment litigation attorney, who worked on protecting the deceased singer's intellectual property rights. Valuation disputes in the Tax Court are often a battle between competing expert appraisal witnesses, and this case is believed to be the first in which the IRS has disputed the valuation of these particular assets of a famous decedent.