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A “Thriller” in Tax Court: The Estate of Michael Jackson and IRS Dispute Valuation of Pop Star’s Image

BY JON BAROOSHIAN • MARCH 17, 2017

How much were the late King of Pop’s name and image worth when he died? His estate put the figure at \$2,105 but the IRS believes the value is at least \$434 million. That’s a huge discrepancy and with penalties and interest the total could exceed \$1 billion.

During the trial that ended on February 24th, the estate of Michael Jackson pointed to a lack of endorsement deals and accusations of child abuse to support its \$2,105 value. The IRS, citing the success of Jackson’s estate in monetizing the singer’s name and image to gross more than \$1 billion through licensing deals, believes that amount should be closer to its assessment of \$434 million.

When Michael Jackson died, he was entangled in legal battles, had taken major hits to his public image and was deeply in debt. After his death, the executors of Michael Jackson’s estate orchestrated a masterful turnaround and generated more than a billion dollars in revenue using the King of Pop’s likeness.

While the concept of infringement upon an individual’s right to his or her image and right of publicity as a distinct commercial tort was recognized by the U.S. Supreme Court in 1977, the issue of a celebrity’s estate being responsible for tax on the individual’s right of publicity was not addressed until a 1994 case involving the estate of V.C. Andrews, the best-selling author of “Flowers in the Attic.”

The author’s estate failed to list Andrews’s name among its assets when it filed its estate tax return. The IRS issued a deficiency notice, claiming that Andrews’s name was an asset that held a value of more than \$1.2 million on the date of her death, rendering a tax deficiency of \$650,000. A federal district court used elements of both the estate’s and the IRS’s valuations, and concluded that Andrews’s name had a value of \$700,000 at the time of her death. The ruling changed the common thinking used by estate planners that a decedent’s right of publicity had no value for federal estate tax purposes at the time of the taxpayer’s death.

With the trial over and post-trial briefs due by summer, it is unlikely that the parties will settle. An opinion by the Tax Court will carry substantial precedential value, mapping the way for the IRS to assess values for Whitney Houston's estate as well as those of Prince and others.