



## Robert W. Wood

THE TAX LAWYER

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### Tax Lawyer Son's Help, Priceless?

Beauty may be in the eye of the beholder and perhaps value is too. How much would you pay to have your child take care of you when you're old and infirm? What if your child gave up practice as a tax lawyer to care for you?

Perhaps plenty, but probably not \$1.24 million even if your son is a tax lawyer. That's one lesson from [Estate of Olivo v. Commissioner](#). The Tax Court considered whether mom's estate could deduct a whopping \$1.24 million as an expense for the son's services before mom died.

The son was Anthony Olivo, a tax lawyer who ended up providing nearly full-time care for his mother and father. He worked in law firms from 1976 to 1988 and then opened his own practice. Yet by 1994, given all the time he was devoting to his parents and their health problems, he found it hard to maintain his practice. He lived with his parents and gave them round-the-clock care from 1994 through 2003, during which he earned no significant income from his law practice.

The tax questions before the court were: (1) Whether the estate could deduct \$1.24 million for fees it paid to Anthony; (2) whether the estate could deduct a \$44,200 administrator's commission paid to Anthony; and (3) whether the estate could deduct \$55,000 in accountant's and attorney's fees Anthony claimed.

The court was careful to note that Anthony rendered extraordinary care and that his efforts were commendable. However, the court ruled that his mother's estate did not establish that Anthony was entitled to that pay. There were no written agreements and scant evidence the family agreed to pay him.

Anthony gave round-the-clock care—he usually slept in his clothes—and the family would have had to hire round-the-clock nurses to handle the work if Anthony hadn't been there. Even so, that's wasn't enough for the deduction. There was no contract and no firm evidence of how much Anthony's services were worth. Interestingly, this was not a case in which the \$1.24 million had been paid to Anthony and the estate was just trying to deduct it. In fact, Anthony had not received **any** of that money when the Tax Court heard the case.

The court even looked at whether Anthony could bill the estate for his legal services. After all, on top of his personal care and administering the estate, he performed legal services for the estate. He filed the [estate tax return](#), handled the IRS audit and filed the estate's Tax Court petition. But here again Anthony was out of luck.

He didn't keep time records, didn't prepare invoices, and didn't establish the value of what he did. He merely estimated a number of hours and then used a \$150 hourly rate. That kind of loosey-goosey estimate wasn't enough for a deduction, found the court.

The biggest lesson may be that contracts, invoices, and good record-keeping are just as important in a family or related party setting as they are anywhere else. In fact, perhaps there's an even bigger reason for being scrupulous with family and related parties: to save yourself headaches with the IRS.

For more, see:

[No Deduction For \\$1.2m Claim For Services By Tax Attorney Son For Infirm Parents](#)

[10 Ways To Audit Proof Your Tax Return](#)

## [IRS: Frequently Asked Questions on Estate Taxes](#)

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