

**T&E - Tax Alert May 11, 2007**

Estate of Hilde E. Erickson v. Commissioner T.C. Memo 2007-107 filed April 30, 2007  
Judge Kroupa

This case consolidates a gifting tax case made moot by the decedent's death and is indicative of what can happen when an estate uses the partnership concept but does not get it right in formation and in administration. This case is a full victory for the service under IRC 2036 [a] [1] and the bad facts speak for themselves.

One of the decedent's daughter, under a durable power of attorney, created a partnership well after her mother was diagnosed with Alzheimer's disease. The daughter actually signed the document for practically all sides of the partnership agreement, including general and limited partners, and all parties were represented by the same law firm. She was also her mother's estate representative.

The partnership was not funded until a few days before the date of death, when the decedent was fighting pneumonia in a hospital. Moreover, as the result of frantic transfers of assets to the partnership, then of partnership interests so close to the date of death, the estate actually became insolvent and partnership distributions took place by redemption. The court used this fact as an indication that the partnership was merely estate-tax driven, and that the decedent actually retained an interest in the property transferred to the partnership. Little, if anything, changed after the partnership was formed. The Court also found that the exception to IRC 2036 did not apply: the decedent, in effect, retained rights with respect to the property transferred; the court did not believe that non-tax reasons for the partnership existed nor that the sales were bona fide. Hence IRC 2036 strikes again !

The estate tried to shift the burden of proof to the service under IRC 7491, but the Court found that the only testimony, provided by the daughters, was self-serving and thus not credible.

The decision is available on the Court's website located at: <http://www.ustaxcourt.gov/InOpHistoric/erick8son.TCM.WPD.pdf> and a copy has been placed on my practice's website at: <http://www.NYNJCT-BV.com/erick8son.TCM.WPD.pdf>

Do not hesitate to call or e-mail to discuss this or any other valuation issue.

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