T&E E-mail Alert

In a rather expected decision, the U.S. Appeals Court for the 5th Circuit affirmed the Tax Court decision that the assets of the partnership interests reverted to the estate due to application of IRC 2036(a.) The appeals court limited itself to noting that the tax court did not commit any errors in its construction. It did not say what it would have ruled if presented with the same facts as the tax court.

The facts were bad for the tax payer, who had transferred almost all his assets to the partnership, so much so that the tax court saw an implied agreement with his family to the effect that he could enjoy the benefit of the partnership assets even after their transfer. Originally, the tax court ruled [in 2000] that the partnership was valid for estate tax purposes, was not subject to IRC 2703(a) and that no gift was created by the transfer. The 5th Circuit then considered [in 2002] the IRS request to leave to amend in order to add an IRC 2036(a) claim; it disagreed with the tax court denial and reversed on that count only. Upon remand, the tax court then determined [in 2003] that IRC 2036 applied, which placed all partnership assets back into the estate. This second appeal to the 5th circuit, filed July 15, 2005, decided that the tax court's second ruling in this matter was not in error.

The appeals court's decision is located at:

http://www.ca5.uscourts.gov/opinions%5Cpub%5C03/03-60992-CV0.wpd.pdf

or: http://www.NYNJCT-BV.com/strangiApp5decision.pdf

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