Estate of Bongard v. Commissioner, 124 T.C. No. 8 (filed March 15, 2005.)

Entrepreneur E started a business in the eighties, and in 1986 established an irrevocable stock accumulation trust funded with his stock in the business. In the mid-nineties, the business' board of directors determined that pooling all of E's family stock in the business into a holding company would position the business better for a corporate liquidity event, which was necessary to raise capital and remain competitive. Accordingly, both E and the 1986 trust transferred their respective operating company stock to a holding company, taking holding company stock in exchange. The holding company stock was further split into governance and financial units, the former being the only one to carry voting rights.

In 1996, E and the trust formed a limited partnership. E transferred only his non-voting holding company stock to the partnership, and took back a 99% limited partnership interest. The trust transferred a portion of its non-voting holding company stock in exchange for a 1% general partnership interest.

One year later, E gave a 7.7% limited partnership interest to his wife. Two years later, E dies. IRS contends that all transfers, starting in the eighties, are void for estate tax purposes under IRC Section 2036, and all property reverts to his estate.

IRC 2036 makes transfers void for estate tax purposes when the transferor retains rights, safe for a "bona fide sale for adequate and full value of money and money's worth" exception. The 5th Circuit decision in *Kimbell* in May, 2004 elaborated with both an "arm's length" and an adequate and full consideration" requirements to qualify for the exception. Apparently, the tax court just inserted a requirement of a non-tax purpose, which may send the case to the very same appeals court. 9 justices signed the majority opinion, while Judge Laro concurred in result only and 2 judges disagreed.

The Tax Court concluded that the transfers between E, the trust and the holding company were valid for the purpose of tax calculation because there were business, non-tax reasons to make the transfer. The Service and the estate agreed to use a 13% lack-of-control discount, a 17.5% lack-of-marketability discount and, when applicable, a 5% discount for lack of voting rights.

On the other hand, the Court concluded that the later transfer between the holding company and the FLP did not satisfy the bona fide exception sale exception of Section 2036. Hence no discount at that level.

The opinion can be studied at: http://www.ustaxcourt.gov/InOpHistoric/Bongard.TC.WPD.pdf

J.L. PIERSON, ASA
Business Valuation
mailto:jlp@NYNJCT-BV.com
http://www.NYNJCT-BV.com
Voice + fax: 203-325-2703
Cell when traveling: 203-434-4648