

T&E Alert

Estate of Lillie Rosen v. Commissioner U.S. Tax Court Memorandum 2006-115 filed June 1, 2006

With this opinion, Judge Lauro wrote a treatise on what *not* to do in matters involving the estate tax and Family Limited Partnerships. By showing that the requirements of IRC Section 2036 (a) (1) was not satisfied, he included the partnership's several million's worth of marketable securities back into the decedent's estate, defeating the estate planning mechanism. Of course, the Court had considerably expanded on the subject of the bona fide exemption of Section 2036 since the partnership was formed in the nineties with such important decisions as Estate of Thompson [TC Memo 2002-246, affirmed by the 3rd Circuit in 2004] Estate of Abraham [TC Memo 2004-39,] Estate of Strangi [TC Memo 2003-145 affirmed by the 5th Circuit in 2005,] and Bongard [TC Memo 2005-8.] Many of these decisions were subjects of T&E Alerts at the time, and the decisions can be found on the Tax Court' and Appeals Courts' websites.

Still, significant mistakes were made by the Estate: the decedent was elderly and in failing health when the FLP was created; her living expenses and gifting commitments needed to be covered by FLP loans; the FLP did not follow such common practices as maintaining books and records beyond tax returns; none of the partners negotiated the terms of the FLP, which was drafted by an estate attorney without consulting the decedent nor her children; the partnership assets were passive investments, and their management followed the same pattern before and after the FLP creation; the FLP protection against claimants was basically identical to that provided earlier by a family trust; and beneficiaries ended up on several sides of key transactions. To the Court, it looked like the principal purpose of the FLP was, in fact, to avoid estate taxes. Simply changing the form of ownership, we now know, no longer provides any form of magic.

The decision is available at
<http://www.ustaxcourt.gov/InOpHistoric/ros2en.TCM.WPD.pdf>

or at <http://NYNJCT-BV.com/Rosen.pdf>.

Have a good summer !

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