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Tax Valuation E-Flash

Rosalie Gulig, Independent Executrix, on Behalf of the Estate of Albert Strangi, Deceased v. Commissioner, US Court of Appeals for the 5th Circuit, No. 01-60538, June 17, 2002

The Fifth Circuit reversed a Tax Court denial of leave to amend, but affirmed the other portions of the decision. The Fifth Circuit did note that the Tax Court may revisit the valuation discounts after considering the IRS' §2036 claim.

The Fifth Circuit heard an appeal of *Estate of Strangi v. Commissioner*, 115 T.C. No. 35, November 30, 2000, (*E-Flash 2-19*). Mr. Strangi had transferred portfolio assets to the Strangi Family

The Fifth Circuit affirmed the Tax Court's holding that the SFLP had a business purpose and economic substance and shouldn't be disregarded for estate tax purposes.

Limited Partnership (SFLP) shortly before his death. A sharply divided Tax Court had held: (1) SFLP was valid under State law and would be recognized for estate tax purposes; (2) § 2703(a) did not apply to the partnership agreement; and (3) the transfer of assets to the partnership was not a taxable gift.

In the original opinion, the Tax Court said, *"In view of our rejection of respondent's belated attempt to raise section 2036 and respondent's request that we disregard the partnership agreement altogether, we are constrained to accept the evidence concerning discounts applicable to decedent's interest in the partnership and in Stranco as of the date of death. We believe that the result of respondent's expert's discounts may still be overgenerous to petitioner, but that result is the one that we must reach under the evidence and under the applicable statutes."*

On appeal, the Fifth Circuit considered the IRS's request for leave to amend to add the §2036 claim. Under §2036, the estate would be required to include the assets transferred by Mr. Strangi to SFLP rather than just his partnership interest in SFLP. The Fifth Circuit disagreed with the

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Tax Court's denial of the IRS leave to amend and reversed the Tax Court on that single issue.

The Fifth Circuit affirmed the Tax Court's holding that the SFLP had a business purpose and economic substance and shouldn't be disregarded for estate tax purposes. The Fifth Circuit also affirmed that §2703 didn't apply to the partnership agreement and that the transfer of assets to the partnership wasn't a gift. The Fifth Circuit did note that the Tax Court may revisit the valuation discounts after considering the IRS' §2036 claim.

In the Tax Court case, the IRS and taxpayer experts determined a 25% lack of marketability discount was appropriate for SFLP. They disagreed, however, on the minority interest discount. The IRS appraiser used 8% while the taxpayer expert used 25%. The Tax Court adopted the IRS appraiser's valuation and noted the taxpayer expert's "...result is unreasonable and must be rejected." The IRS appraiser selected the lower minority interest discount based on his analysis of closed end mutual fund data, and the Tax Court found this analysis to be "well documented and persuasive."