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Estate of Charlene B. Shurtz vs. Commissioner, T.C. Memo 2010-21, February 3, 2010.

The Facts:

Mrs. Charlene Shurtz was born in 1925 and was one of three children of Charles and Bonnie Barge. The Barge family owned and managed 45,197 acres of timberland in the state of Mississippi. Mrs. Shurtz married Reverend Richard Shurtz, and their family, lived and performed missionary work in Mexico and Brazil from 1954 to 1986. In 1986, they returned to the United States when Reverend Shurtz was offered a position as pastor at a church in Montebello, California.

Over time, Mrs. Shurtz and her two siblings (Richard Barge and Betty Morris) had received via gifts or inheritance interests in the Mississippi timberland. In 1993, Mrs. Shurtz, her two siblings, their mother Bonnie, and trustees of several trusts for the grandchildren created C.A. Barge Timberlands, L.P. ("Timberlands LP") to operate and manage the family property. This was done because by this time, at least 14 family members held separate undivided interests in the Barge timberland which had created difficulties in the operation and management of the business. Each individual and trust contributed their property interests to the limited partnership in exchange for limited partnership shares. The general partner was a newly created entity, Barge Timberlands Management, Inc. ("BTM") that was owned 1/3 each by Mrs. Shurtz, Richard Barge, and Betty Morris.

Although Mrs. Shurtz was wealthy, the Shurtzes lived modestly and by 1996 had a net worth of approximately \$7,000,000. In keeping with their religious philosophy that they were given this wealth to do God's work, Mrs. Shurtz and her husband used their wealth to contribute to a broad range of charities, including evangelical missions, humanitarian aid groups, church construction and groups that assisted orphans. Between 1989 and 2001, they donated approximately \$972,000 to charity.

Mrs. Shurtz developed Parkinson's disease in 1986, but was able to manage her condition with medication and her illness did not affect her cognitive abilities.



Due to the litigious nature of the state of Mississippi and their reputation for “jackpot justice” many people chose to create family limited partnerships to reduce their litigation risks in the state. Reverend and Mrs. Shurtz sought the legal advice of James Dossett, an experienced tax attorney. Mr. Dossett recommended that each family hold its Timberlands LP interest in a limited partnership as by doing so, the family timber business could be protected since a judgment creditor would not be able to seize the underlying timberland, but only have a right to distributions made by Timberlands LP to its partners. Mrs. Shurtz also wanted to give her children and grandchildren interests in the 748.2 acres she had acquired from her parents, and did not want to create a large number of undivided interests. Thus, on November 15, 1996, the Shurtzes’ created Doulos L.P., which was funded with Mrs. Shurtzes’ 16% interest in Timberland LP, her 93.4% ownership in the 748.2 acre parcel of timber, and Reverend Shurtzes’ 6.6% ownership in the 748.2 acre parcel of timber. Mrs. Shurtz received a 1% general partner and 98% limited partner equity interest in Doulos L.P. and Reverend Shurtz received a 1% general partner equity interest in Doulos L.P. The Shurtzes’ formed Doulos LP to “reduce their estate, provide asset protection, provide for heirs and provide for the Lord’s work”.

Between 1996 and 2000, Mrs. Shurtz made 26 separate gifts of 0.4% limited partnership equity interests in Doulos L.P. to her children and to trusts for her grandchildren. Each of these gifts was each valued at less than \$19,700 and each qualified for the annual exclusion gifting.

In 1998, Mrs. Shurtz contacted the Dallas Seminary Foundation for assistance with some additional estate planning. The seminary referred them to attorney Louis Wall who then helped Mrs. Shurtz draft a revocable trust agreement to take effect upon the death of either Mrs. Shurtz or Reverend Shurtz. The Shurtz Family Trust was intended to achieve the following goals: to (i) assure to the extent possible that there was no Federal tax due at the death of the first spouse; (ii) minimize Federal estate taxes at the surviving spouse’s death through proper use of the available unified credit amount, coupled with use of each of the survivor’s remaining generation-skipping amounts to the extent possible; (iii) assure that the decedent’s interest in Doulos L.P. remained in the family and (iv) provide for the remainder of the estate to pass into a charitable annuity lead trust which would provide for a 12% per year annuity to charity for a term sufficient that the remainder interest to the family members would be valued at zero or as close to zero as possible.

Mrs. Shurtz passed away on January 1, 2002, leaving an estate valued at approximately \$8.8 million. Mrs. Shurtzes’ estate filed Form 706 claiming no tax due. The IRS contested the estate and issued a deficiency of over \$4.7 million.



The Arguments and Findings:

The IRS claimed that Doulos L.P. was not a valid family limited partnership (claiming that Mrs. Shurtz retained control, use and benefit of the transferred assets) and therefore the assets of Mrs. Shurtzes' estate should be valued at full fair market value rather than discounted family limited partnership value under Sections 2036 and/or 2035(a).

The Estate claimed that there was no taxable estate because her entire estate was left first to a unified credit trust and then to various marital trusts. Furthermore, the Estate claimed that Section 2036(a) did not apply because Mrs. Shurtz's transfer of assets to Doulos L.P. constituted a "bona fide sale for adequate and full consideration".

The Court reviewed the requirements for a bona-fide sale and concluded that in general there must be a legitimate non-tax purpose for forming an FLP. The Court determined that in the case of property held in Mississippi, the litigious nature of the state provided a legitimate non-tax reason for attempting to protect the family's assets. In addition, the Court found that preserving the family business was also a legitimate non-tax reason for forming an FLP. In reviewing the "full and adequate consideration" the court reviewed the following factors: (i) the contributors received interests in the family limited partnership in proportion to their capital contributed; (ii) the respective assets contributed were properly credited to each respective partner's capital account; (iii) distributions from Doulos, L.P. required a negative adjustment in the distribute partner's capital account. The Court found that there were sufficient "legitimate and significant non-tax business reasons" for creating the FLP. Thus, the Court ruled that the bona-fide sale exception applied and the fair market value of Mrs. Shurtz's partnership interest in Doulos L.P. (and not the fair market value of the contributed property) was includable in her gross estate. Thus, the Court ruled that there was no estate tax deficiency and no tax was due from the Estate.

Parting Thoughts:

This was a nice victory for the taxpayer and an excellent "example" of a successful family limited partnership. The partnership had a valid business purpose, contributions were properly documented and capital accounts were appropriately maintained, the partnership had annual meetings and there was correct accounting of all distributions. I was hoping there was further discussion regarding the lack of control and lack of marketability discounts applied in determining the value of Mrs. Shurtz's annual exclusion gifting each year, but there was no mention of the magnitude of either discount.