

***Mark and Michelle Senda, T.C. Memo 2004-160, July 12, 2004***

The Facts: The taxpayers set up two FLP's in 1996 and 1999. They formed these entities with their children as limited partners. At a disputed later point in time, the taxpayers transferred shares of MCI Worldcom to the partnership and made gifts of FLP interests to the children. The taxpayers argued that they made gifts of valid limited partnership interests and the partnerships should not be disregarded. The IRS did not dispute the validity of the partnerships or argue that the partnerships lacked economic substance. However, the IRS did argue that the "transitory allocations to petitioners' capital accounts, if such allocations even occurred at all, were merely steps in integrated transactions to pass the stock to the petitioners' children in partnership form."

The Decision: The Tax Court found that an indirect gift of stock had occurred rather than gifts of limited partnership interests, noting the following:

1. It is unclear if the taxpayers' contribution of stock to the partnerships was ever reflected in their capital accounts.
2. The children received their partnership interests in exchange for oral accounts receivable that had never been documented in writing and remained unpaid at trial.
3. The required preparation of annual financial statements and the annual partner meeting required by the agreement both never took place.
4. The taxpayers paid all legal fees and filing costs for the formation of the partnerships, costs that were never reimbursed by the partnerships.
5. The taxpayers presented no reliable evidence that they contributed stock to the partnerships before they transferred the partnership interests to their children.

There was no dispute as to the value of the stock or the partnership interests, with minority interest discounts of 5.88%, 15.44% and 17.12% for the three relevant dates and a 35% marketability discount for all the gifts.

The End Result: The taxpayers, through sloppy handling of the partnership, now owe Federal gift taxes of almost \$500,000 for gifts of MCI-Worldcom stock whose value has subsequently declined by almost 90%. OUCH!!!