Albert Strangi et al. v. Commissioner, No. 03-60992, United States Court of Appeals for the Fifth Circuit, July 15,2005.

The Facts:

Shortly before Mr. Strangi's death in 1994, he transferred 98% of his assets to a FLP. Upon review of the Estate in 2000, the Tax Court held that the FLP was valid under state law and would be recognized for estate tax purposes. The Tax Court also said that the transfer of assets to the Partnership was not a taxable gift and that IRC 2703(a) did not apply to the Partnership agreement.

The IRS appealed the decision and the Commissioner filed a motion to add a §2036 claim. The Fifth Circuit disagreed with the Tax Court's denial of the IRS request to amend and reversed the Tax Court decision. Upon remand, the Tax Court determined that Strangi and his children had an implied agreement by which Strangi would continue to use his assets as needed, and therefore retained "possession or enjoyment" within the meaning of §2036. Accordingly, the Tax Court ruled that the full amount of the assets transferred must be included in Strangi's Estate. The Estate appealed this ruling by contending that the Tax Court erred in holding that Albert Strangi retained "possession or enjoyment" of the property transferred. Furthermore, the Estate contended that the Tax Court erred in holding that the transfer did not fall within the "bona fide sale" exception.

The Final Decision:

The Fifth Circuit affirmed the Tax Court decision that there was no clear error in the Tax Court's finding under §2036(a)(1) regarding the implied agreement between Albert Strangi and his children.

Regarding the "bona fide sale" exception, the Estate had previously offered the following five non-tax purposes for the contribution of assets to the partnership: (1) deterring potential tort litigation by Strangi's former housekeeper; (2) deterring a potential will contest by the step children; (3) persuading a corporate executor to decline to serve; (4) creating a joint investment vehicle for the partners; and (5) permitting centralized, active management of working interests owned by Strangi. The Fifth Circuit agreed that there was full and adequate consideration but agreed and affirmed the Tax Court decision that there was no bona fide sale because it did not meet the substantial business or other non-tax purpose (according to the Fifth Circuit, they found "no clear error" by the Tax Court in rejecting these purposes).

Parting Thoughts:

This one went to the 15th inning before the IRS pulled this one out and put another notch in the "Win" column. However, nothing new was learned from this "trilogy" as we have seen several other examples of problems with fact patterns that lead one to believe that there was an implied agreement.