Estate of Theodore Thompson, Deceased v. Commissioner (No. 03-3173) (United States Court of Appeals for the Third Circuit), September 1, 2004

<u>The Facts:</u> Theodore Thompson died at the age of 97 on May 15, 1995. He had formed two FLP's in 1993. He transferred substantially all of his investment assets (primarily cash, marketable securities and loans receivable from family members) to these partnerships. Before forming the partnerships, Mr. Thompson and his children agreed that he would be taken care of financially. The children also transferred assets to the partnerships, but structured these transfers so they would retain the income from these assets.

<u>The Findings:</u> The Tax Court concluded that Section 2036(a) should apply because, at the time of the asset transfer, there was an implied understanding that Mr. Thompson would retain the enjoyment and economic benefit of the property he transferred. The Court said that the transfer of the bulk of Mr. Thompson's assets deprived him of the assets needed for his own support absent the implied understanding. Furthermore, the Tax Court concluded that Mr. Thompson's transfer of assets to the partnership was not a bona fide sale for full and adequate consideration.

<u>The Appeal Result:</u> The US Court of Appeals for the Third Circuit analyzed the Tax Court decision and discussed the operations of the partnerships, including the lack of a "valid, functioning business enterprise." The Court of Appeals affirmed the Tax Court decision.