

satisfied: (1) the decedent made an inter vivos transfer of property, (2) the decedent retained an interest or right in the transferred property, and (3) the decedent's transfer was not a bona fide sale for adequate and full consideration.

Since the Estate acknowledges the inter vivos transfers to the Partnership, the Courts' analysis focused on the second and third condition of 2036(a).

**Did the decedent retain an interest or right in the transferred property?**

Property is included in a decedent's gross estate if the decedent retained, by express or implied agreement, possession, enjoyment, of the right to income from the transferred property.

The Estate's primary argument was that the Decedent held only a limited partner interest that according to the operating agreement had no right or power to participate in the Partnership's business or operations. Further, the Decedent had no right to designate who would possess or enjoy the assets of the Partnership or the income thereof.

The Service on the other hand argued that the Decedent retained possession of the property and the right to income. The Service supported this argument by pointing to the operating agreement that allowed for periodic distributions to the partners when needed.

The Court agreed with the Service, stating:

Mr. Holliday's testimony makes it clear that had Decedent required a distribution, one would have been made... on the basis of the facts we believe that there was an implied agreement that Decedent retained the right to the possession or enjoyment of, or the right to the income from, the property. Accordingly, the second condition necessary for Section 2036(a) to apply has been met.

**Was the transfer a bona fide sale?**

The bona fide sale exception depends on two requirements: (1) A bona fide sale, meaning an arm's-length transaction, and (2) adequate and full consideration. The Court went on to state that in the context of a family limited partnership the bona fide sale exception is satisfied "where the record establishes the existence of a legitimate and significant nontax reason for creation of the partnership."

The Estate put forth three arguments to support the nontax reason for creation: asset protection from trial attorney extortion, asset protection from undue influence of caregivers, and preservation of assets of heirs.

not find any of the above arguments supported by the record. The Court made several observations to the contrary, including:

- Decedent had never been sued and held significant assets outside the Partnership that could have also been subject to extortion.
- The potential threat from caregivers was never discussed with Mrs. Holliday.
- Assets were already held in trust and the Partnership structure did not yield significant advantages over the trust structure.
- Decedent was not involved in selecting the Partnership structure.
- Decedent stood on both sides of the transaction as she made the only contribution to the Partnership and there was no negotiation or bargaining associated with the formation of the Partnership.
- The Partnership failed to maintain books and records and failed to have official meetings.
- The Partnership did not follow the terms of its operating agreement.
- The Partnership held only marketable securities that were not actively managed and were traded only on limited occasions.

The Court concluded: