

## FCG VALUATION CASE E-FLASH

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Issue 14:3**

*Estate Of George H. Wimmer, Deceased, George W. Wimmer, Personal Representative, Petitioner V. Commissioner Of Internal Revenue, Respondent*

T.C. Memo. 2012-157, Docket No. 26540-07, Filing date June 4, 2012, Judge Elizabeth Crewson Paris

The Tax court was tasked with determining if gifts of limited partnership interests transferred by the Decedent between 1996 and 2000 qualified for the Federal gift tax annual exclusion under [§ 2503\(b\)](#).

### TAKEAWAY

Because the general partners followed their fiduciary duty and the partnership agreement, gifts of limited partnership interests in a family limited partnership were gifts of present interests, thereby qualifying them for the Federal gift tax annual exclusion and were not includable in the Decedent's estate.

### THE FACTS

In 1996, George H. Wimmer ("Mr. Wimmer" or the "Decedent") together with his wife, each acting as trustee of their individual trusts, formed the George H. Wimmer Family Limited Partnership, L.P. ("WFLP" or the "Partnership"). The Partnership was created for several stated reasons, including increasing the wealth of the partners and transfer assets to younger generations through the gift tax exclusion without fractionalizing the assets. Although the certificate of limited partnership was not filed until March 1997, the partnership agreement was executed on June 27, 1996. WFLP was funded in 1996 with dividend paying common stock and no additional funding was contributed during WFLP's history.

During every year between 1996 and 2000, Mr. Wimmer gifted limited partnership interests to relatives and trusts for the benefit of relatives. The transferred interests were subject to onerous transfer restrictions, including requiring unanimous consent of the general and limited partners to be admitted as a substituted limited partner.

Because WFLP's primary asset was a dividend paying stock, the Partnership received dividends. WFLP then distributed all of its dividend income (net of expenses) pro rata to its partners.

### DISCUSSION

The parties disagreed as to whether the gifts of limited partnership interests were present interests or future interests. If the interests were present interests, they qualified under [§ 2503](#) as gifts. If they were not present interests, they were includable in the Decedent's estate.

The court ruled that the limited partnership interests themselves were not present interests. However, relying on *Calder v. Commissioner*, 85 T.C. 713, 727-728 (1985), the court used a three pronged test to determine if the income generated by the Partnership satisfied the criteria to be a present interest under [§ 2503](#):

- Will the Partnership generate income?
- Will some portion of that income flow steadily to the donees?
- Can that portion of income distributed be readily determined?

Because WFLP owned a dividend paying stock and because dividends were received quarterly in every period during which gifts of limited partnership interests were gifted, the Partnership satisfied the first prong.

The court determined some portion of income would flow to the donees due to the fiduciary duty of the general partners to the limited partners. When combined with the Partnership's sole asset being a dividend paying stock and its stated intent to use the gift tax exclusion to transfer interests to younger partners, the court found the fiduciary duty of the general partners satisfied the second prong. In particular, the court noted the distributions to satisfy the tax liabilities associated with entity income for various limited partner trusts met the fiduciary duties of the general partners.

Finally, because the stock was publicly traded and because it distributed income quarterly, partners could reasonably determine estimated quarterly and annual income. As a result, the court ruled for the estate and determined the transfers of limited partner interests were present interests. Therefore, the gifts of present interests qualified for the federal gift tax annual exclusion under [§ 2503\(b\)](#) and were not includable in the Decedent's estate.

**CONCLUSION**

Strict adherence to fiduciary duty and the terms of the partnership agreement resulted in a favorable determination for the estate.

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