Update on FLP Cases – Litigation Perspective

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A. *Estate of Kelly v. Comm'r*

In *Estate of Kelly v. Commissioner*, T.C. Memo 2012-73 (March 19, 2012), the Tax Court (Judge Foley) held that § 2036 does not require estate tax inclusion of operating quarries and other real property and assets contributed to a partnership during a guardianship proceeding. *Kelly* involved the creation of a partnership under a court order allowing the decedent's guardianship estate to contribute operating quarries and other assets to limited partnerships. The general partner of the partnerships was a corporation owned entirely by the decedent. The primary reasons proffered for the creation of the entities were to (1) ensure the equal distribution of the decedent's estate, thereby avoiding litigation after the decedent's death, (2) provide effective management, and (3) address potential liability concerns. The plan provided for the management of the assets (many of which required active management). Ms. Kelly retained $1.1 million out of the partnerships, and no distributions from the partnerships were used to pay any of her living expenses. The court found that the reasons for creating the partnership were legitimate and significant non-tax reasons, and the bona fide sale for full and adequate consideration exception applied.

Ms. Kelly also made gifts of limited partnership interests prior to her death. The IRS argued that the parties had an implied agreement that the decedent would continue to enjoy the income from the partnerships and that the partnerships' assets attributable to those gifted interests were includable in the gross estate under § 2036(a)(1). The IRS also argued that the language in the petition to the guardianship court for authority to implement the plan, which provided that the decedent would own all of the outstanding stock of the corporate general partner and that the management fee received would ensure that the ward would be provided with adequate income to cover her probable expenses for support, care and maintenance for her lifetime, was evidence of a retained right. The court rejected this argument, noting that the parties respected the entities, the decedent retained sufficient assets for living expenses, the management fee paid to the corporation was not used to pay living expenses, the fiduciary duties limited the fee to reasonable management fees, and the management fee paid to the company were in fact reasonable.

B. *Estate of Lockett v. Comm'r, T.C. Memo. 2012-123 (Apr. 25, 2012)*

In *Estate of Lockett v. Commissioner*, the Tax Court (Judge Haines) held that the assets of a family limited partnership in which the decedent owned 100% of the interests should be included in the her estate. The case was decided on state law property right principles, not under a § 2036 analysis.

During 2000, Lois Lockett decided to create a family limited partnership based on her advisor's advice. She involved her two sons (Joseph and Robert) and former daughter-in-law (Mary) in its creation. In March of 2000, her accountant filed articles of organization with the State of Arizona for Mariposa Monarch, LLLP, an Arizona limited liability partnership ("Mariposa"). At that time, no decision had been made as to what percentage interest each family member would hold in Mariposa, what assets would be contributed, or who would be members. Although Mariposa was not funded in either 2000 or 2001, the accountant prepared income tax returns for 2000 and 2001 and reported no income and no activity. He also prepared Schedules K-1 for the partners he believed would be part of Mariposa (Joseph, Robert, and Mary as general partners and Mrs. Lockett, Joseph, Robert, and a trust created by Mrs. Lockett's deceased husband of which Mrs. Lockett was the beneficiary and over which she had the unlimited power to withdraw principal ("Trust A"), as limited partners).

On March 26, 2002, Mrs. Lockett, Joseph and Robert executed the Mariposa Partnership Agreement (the "Mariposa Agreement"), a certificate of limited partnership, and a statement of qualification for a limited liability partnership for Mariposa (by this time Mary had been excluded from the process). Joseph and Robert signed the certificate as general partners and it was filed with the State of Arizona on April 5. The Mariposa Agreement was signed by Mrs. Lockett, Joseph, and Robert, individually, and by Mrs. Lockett, Joseph and Robert as trustees of Trust A. The Mariposa Agreement named Joseph and Robert as general partners and Mrs. Lockett, Joseph, Robert, and Trust A, as limited partners. The Tax Court found at the time the Mariposa Agreement was signed, the parties had still not agreed upon the initial capital contributions or their percentage interests in Mariposa.

Funding began in May of 2002. Trust A transferred approximately $500,000 of marketable securities and $171,000 of sale proceeds from a land transaction to Mariposa. In October of 2002, the trustees of Trust A deposited a check in the amount of $35,750 made out to Trust A in Mariposa's bank account. On May 20, 2002, Mrs. Lockett individually transferred approximately $235,000 to Mariposa, and Trust A transferred an additional $125,000 to the partnership. Joseph and Robert made no contributions to Mariposa. Mariposa's assets were managed by a financial advisor. Joseph was not involved in the administration of Mariposa. Robert was somewhat involved, having signed Mariposa's tax returns.

In May of 2003, the trustees terminated Trust A, effective December 31, 2002. Trust A's assets were distributed to Mrs. Lockett (the sole beneficiary). As a result, Mrs. Lockett became the owner of Trust A's limited partner interest in Mariposa. On May 9, 2003, the parties amended the Mariposa Partnership Agreement reflecting the fact that Mrs. Lockett was now the sole limited partner of Mariposa. The amendment continued to list Joseph and Robert as Mariposa's general partners. However, the amendment stated that Joseph and Robert each held a zero percent interest in the partnership and that Mrs. Lockett held a 100% interest. The certificate of limited partnership and statement of qualification for a limited liability partnership for Mariposa were also amended to reflect the termination of Trust A and Mrs. Lockett's 100% ownership of the partnership interests. Importantly, the Mariposa Agreement provided that the partnership would dissolve upon the acquisition of all of Mariposa's interests by a single partner.

After funding, loans were made from Mariposa to Joseph and to Robert and his wife. Less than two weeks after the May 2002 funding, Joseph borrowed $200,000 in exchange for a 10-year note and interest at the AFR rate. In mid-2004, Joseph borrowed another $100,000 and signed a new note for $315,000 (the principal balance on the original note, accrued interest, and the new loan). In late May 2002, Robert and Karen borrowed $200,000 from Mariposa using a 10-year note and interest at the AFR rate. The note was never signed. In October of 2002, Robert and Karen made a partial principal payment of $150,000 and later paid interest. In 2004, Robert and Karen borrowed an additional $80,000 and executed a new note for $135,000 (reflecting the principal due on the first note, accrued interest, and the new loan).

Mrs. Lockett died on October 14, 2004. The first ten months of partnership income and expenses were reported to Mrs. Lockett on the 2004 Schedule K-1. The remaining two months were reported in equal shares to Joseph and Robert.

At Mrs. Lockett's death, Mariposa held assets worth $1.1 million. Mrs. Lockett's interest was reported at $667,000, a 40% discount. In its notice of deficiency, the Commissioner asserted that no valuation discount should apply given that Mrs. Lockett owned 100% of the partnership interests. The Commissioner also asserted that the loans were gifts.

1. The Notes – Mixed Results

The first question addressed by the court was whether transfers (loans) from Mariposa to Joseph and Robert constituted bona fide debt or were taxable gifts. The court noted that while "[t]ransactions within a family group are subject to special scrutiny, and the presumption is that a transfer between family members is a gift, that presumption may be rebutted by an affirmative showing that at the time of the transfer, the transferor had a real expectation of repayment and an intention to enforce the debt." (citations omitted). The court outlined the following nine factors to be taken into account and whether to treat the transactions as a debt or a gift: (1) whether a promissory note or other evidence of indebtedness exists, (2) whether interest was charged, (3) whether any security or collateral existed, (4) a fixed maturity date, (5) a demand for repayment, (6) any actual repayment, (7) transferee had the ability to repay, (8) any records made by the transferor and/or the transferee reflecting the transaction as a loan, and (9) the manner in which the transaction was reported for Federal tax purposes.

The court held that the $315,000 transferred to Joseph constituted a bona fide creditor-debtor relationship at the time of the transfer. Although no collateral was given to secure the note and no maturity date was listed, the court noted that Mariposa made a demand for the payment of the $315,000 promissory note against Joseph's estate in 2008 and the estate stated that it expected full payment on its claim. The court further noted that Mariposa treated the transactions as loans by preparing a promissory note, keeping an amortization schedule, and reporting each transaction as a loan. Mrs. Lockett's Form 706 listed the $315,000 note as one of Mariposa's assets.

The court found that a $20,000 transfer from Mariposa to Joseph in 2004 was a gift from Mrs. Lockett. The court noted that Joseph failed to execute a promissory note reflecting the $20,000 transfer, there was no evidence of any interest paid or the repayment of principal. The only evidence in the record that the parties considered the transfer a loan was the claim by Mariposa against Joseph's estate.

The court also held that the $135,000 transfer from Mariposa to Robert and Karen was a valid loan. The court's finding was based primarily on the fact that Mariposa treated the transactions as loans, the accountant drafted the promissory note, amortization schedule, reported each transaction as a loan, and on Mrs. Lockett's Form 706, the promissory note is listed as one of Mariposa's assets.

2. The Partnership – 100% Ownership Causes Estate Inclusion of Assets

The court first rejected the IRS's argument that Mariposa was not a partnership under Arizona law because it was not a business as it engaged in minimal economic activity and because it was not operated as though it was intended to derive a profit. Ariz. Rev. Stat. ann. sec. 29-1012(A) (1998) provides that "the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership." The court agreed that while there was minimal economic activity, there was no requirement that an Arizona business engage in a certain level of activity to be recognized as such. The court further found that Mariposa was operated to derive a profit. The court noted that Mariposa hired a financial advisor to manage its portfolio stocks, purchased real estate which it leased, and made loans requiring annual interest payments.

The court found that Mrs. Lockett held a legal and beneficial interest in all of the assets of Mariposa on the date of her death as the owner of 100% of the limited partner units. Thus, all of the assets of Mariposa were included in her gross estate under §§ 2031 and 2033. The court rejected the Estate's argument that Robert and Joseph were general partners in the partnership as they failed to contribute value to Mariposa in exchange for their claimed general partnership interests. The court noted that the Mariposa Agreement required the partners to contribute capital to Mariposa in exchange for their interests, and found that neither Robert nor Joseph made a contribution of cash or property to Mariposa. The court also rejected the Estate's argument that Robert and Joseph, by agreeing to be general partners in Mariposa, performed services in exchange for their partnership interests. The court stated that Robert and Joseph were minimally involved in the operations of Mariposa and that aside from signing a few documents as general partners of Mariposa, it was entirely unclear what tasks Robert and Joseph performed. The court found that Mariposa's activities were managed by its attorneys, accountants and financial advisor. In addition, the court also rejected the Estate's argument that Robert and Joseph received their general partner interest by gift. The court opined that the Estate was unable to introduce any specific evidence memorializing such a gift. Mrs. Lockett failed to report any such gift on her gift tax returns, and all of the evidence in the record pointed to the fact that Mrs. Lockett owned 100% of Mariposa. "The Forms 1065 and Schedules K and K-1 for Mariposa allocate all profits and losses to Mrs. Lockett."

The court further stated that because the Arizona partnership statutes provide that a partnership is dissolved and its business wound up upon the occurrence of an event agreed to in a partnership agreement resulting in the winding up of a partnership business, and because Article 9.1 of the Mariposa Agreement provided that the partnership would be dissolved upon the acquisition by a partner of all the interests of the other partners, Mrs. Lockett's acquisition of Trust A's limited partner interest caused the dissolution of Mariposa under Arizona law.

C. *Estate of Turner v. Comm'r – Turner II*

In *Estate of Turner v. Commissioner*, T.C. Memo 2011-209 (Aug. 30, 2011), the Tax Court (Judge Marvel) held that the value of property contributed to a family limited partnership by Clyde W. Turner, Sr. ("Mr. Turner") was includable in his estate under both §§ 2036(a)(1) and (a)(2). The court held that § 2036 caused inclusion of property attributable to both the interests he held at his death and those he had given away during his life.

In *Turner II* (*Estate of Turner v. Comm'r*, 138 T.C. No. 14 (March 25, 2012)), the court addressed the estate's motion for reconsideration regarding (1) the § 2036 issue, and (2) whether the marital deduction operated to exclude from the taxable estate the value of the partnership assets attributable to the assets included in the estate under § 2036. The court affirmed its § 2036 holding. As to the second point, the estate argued that there should be no estate tax deficiency because the formula marital deduction clause in Mr. Turner's will allowed the estate to claim an increase in the estate tax marital deduction.

As to the marital deduction issue, the court acknowledged that applying § 2036 in the context of a family limited partnership raises two potential marital deduction issues on the death of the first spouse. First, potential mismatch between the date of death value of the ***partnership assets*** included in the gross estate under § 2036 and the fair market value of ***partnership interests*** used to fund the marital bequest.[1] The court concluded that this mismatch problem did not exist because the IRS increased the marital deduction by calculating it on the basis of the value of the assets transferred in exchange for the partnership interests that were owned by the decedent at death and used to fund the marital deduction bequest.

The second marital deduction mismatch issue that can arise is when lifetime gifts are made of partnership interests to someone other than a spouse, and the date of death value of the assets attributable to those partnership interests is included in the transferor's gross estate under § 2036. The estate asserted that the formula marital deduction should be recalculated based on the date of death value of the assets attributable to the partnership interests given away during Mr. Turner's life. The estate posited that § 2036 creates a legal fiction for purposes of the gross estate, and for consistency purposes, the marital deduction should be increased to reflect that legal fiction. The estate also argued that it would be inconsistent to conclude that the decedent retained a right to possess or enjoy the assets contributed to the family limited partnership, while at the same time ignoring the value of those assets included in the gross estate under § 2036 in calculating the marital deduction.

The court rejected the estate's arguments, stating that the estate tax marital deduction is based on a property interest that passes to or for the benefit of a surviving spouse, not the limited partnership interests that were given to family members (other than the surviving spouse) nor the underlying assets passed to or for the benefit of the surviving spouse. The court

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[1] This issue was raised by the IRS in *Estate of Black* and *Estate of Sturtz*. However, since § 2036 did not apply in those cases, the court did not reach the issue.

thus held that the estate could not deduct the value of either the gifted partnership interests or the underlying assets.

The court noted that the policy behind the marital deduction is one of deferral of tax rather than elimination of tax. Marital deduction property that is owned by the surviving spouse at death is subject to estate tax. In regard to the assets attributable to the partnership interest that Mr. Turner gave to other family members, his surviving spouse did not have beneficial ownership. The court opined that allowing a marital deduction for the value of the gifted partnership interests or the value of the underlying assets would result in assets leaving the marital unit without tax at the first spouse's death or upon a transfer by gift or at the death of the surviving spouse.

D. *Wandry v. Comm'r*

In *Estate of Wandry v. Commissioner*, T.C. Memo 2012-88 (March 26, 2012), the Tax Court (Judge Haines) upheld a dollar value formula transfer clause transferring LLC units. What is unique about this case is that it did not involve a charity or any other tax-free entity.

On January 1, 2004, the taxpayers decided to give LLC units in amounts equal to their (1) $1 million gift tax exemption, to be divided equally among each of their four children, and (2) $11,000 annual exclusion to each of their four children and five grandchildren. Following the advice of their counsel, they made gifts of LLC units under a formula specifying that the LLC units for federal gift tax purposes equaled each of the specific dollar amounts. The transfer documents provided as follows:

> I hereby assign and transfer as gifts, effective as of January 1, 2004, a sufficient number of my Units as a Member of Norseman Capital, LLC, a Colorado limited liability company, so that the fair market value of such Units for federal gift tax purposes shall be as follows:

Name	Gift Amount
Kenneth D. Wandry	$261,000
Cynthia A. Wandry	261,000
Jason K. Wandry	261,000
Jared S. Wandry	261,000
Grandchild A	11,000
Grandchild B	11,000
Grandchild C	11,000
Grandchild D	11,000
Grandchild E	11,000

> Although the number of Units gifted is fixed on the date of the gift, that number is based on the fair market value of the gifted Units,

> which cannot be known on the date of the gift but must be determined after such date based on all relevant information as of that date. Furthermore, the value determined is subject to challenge by the Internal Revenue Service ("IRS"). I intend to have a good-faith determination of such value made by an independent third-party professional experienced in such matters and appropriately qualified to make such a determination. Nevertheless, if after the number of gifted Units is determined based on such valuation, the IRS challenges such valuation and a final determination of a different value is made by the IRS or a court of law, the number of gifted Units shall be adjusted accordingly so that the value of the number of Units gifted to each person equals the amount set forth above, in the same manner as a federal estate tax formula marital deduction amount would be adjusted for a valuation redetermination by the IRS and/or a court of law.

After obtaining an independent appraisal, the LLC's accountant adjusted the capital accounts to reflect the transfers. The taxpayers filed gift tax returns reporting each gift on a percentage basis. However, the dollar value of each gift corresponded to the value of the interest each taxpayer desired to transfer, and the percentage interests were based on the value of a 1% interest reflected in the appraisal attached to their gift tax return.

After an IRS audit, the parties agreed to a higher value for the units transferred. The IRS claimed additional gift tax was due. The IRS asserted that the value of the gifts should be equal to the percentages listed in the gift tax returns multiplied by the stipulated value of a 1% interest. The taxpayer argued that the dollar value formula controlled and required a reallocation of units, which did not change the value of the units transferred to the children and grandchildren.

1. The Tax Return Position Was Not an Admission that Percentage Interests Were Transferred

Relying on *Knight v. Commissioner*, 115 T.C. 506 (2000), the IRS argued that the gift descriptions contained in the gift tax returns were binding admissions that the taxpayers had transferred fixed percentage interests. The court disagreed, noting that in *Knight*, the taxpayers disregarded the formula by arguing that the gifts were actually worth less than the dollar value included in the transfer documents. The court contrasted *Knight* with the fact that the *Wandry* taxpayers believed that they had made dollar value gifts equal to the specified dollar amounts, noting "[a]t all times petitioners understood and believed that the gifts were of a dollar value, not a specified number of membership units." The court further noted that the gift tax returns and the schedules attached to them reported gifts of dollar amounts. The court found that the description of the dollar value transfers and the appraisal report attached to the gift tax returns demonstrated petitioners' consistent intent that dollar value gifts were intended.

The IRS also argued that the capital accounts controlled the nature of the gifts and the capital accounts reflected gifts of fixed percentage interests. The court rejected this argument, opining that the "facts and circumstances determine Norseman's capital accounts, not the other way around." The court pointed out that the Commissioner routinely challenges the accuracy of partnership capital accounts, resulting in reallocations that affect prior years.

2. The Formula Clause Was Not a Void Savings Clause

The IRS next argued that the formula contained an improper savings clause in violation of the public policy principles espoused in *Commissioner v. Procter*, 142 F.2d 824 (4th Cir. 1944). Relying on its analysis in *Estate of Petter*, the Tax Court drew a distinction between a "savings clause" (*Procter*) and a "formula clause" (*Petter*), noting that

> A savings clause is void because it creates a donor that tries 'to take property back.' On the other hand, a 'formula clause' is valid because it merely transfer a 'fixed set of rights with uncertain value.' The difference depends on an understanding of just what the donor is trying to give away. [citing *Petter*].

The court opined that it was inconsequential that the adjustment clause reallocated membership units among the taxpayers and the donees, rather than to a charitable organization, because the reallocation did not alter the transfer. As a result of the transfer, each donee was entitled to a predefined percentage interest in the LLC expressed through a formula. The transfer documents did not allow the taxpayer to take back units; rather, the transfer documents provided for the allocation of the units among the donees and the taxpayers.

The court's public policy analysis went on to address the specific public policy concerns raised in *Procter*. The court first stated that the Commissioner's role is to enforce the tax laws, not just maximize tax receipts. The court also noted that there are mechanisms outside of IRS audits to ensure accurate valuation reporting. As it stated in *Petter*, a judgment in the gift tax case regarding value will reallocate units among the donors and donees. Therefore, the court is not ruling a moot case or issuing merely a declaratory judgment.

Finally, the court addressed the absence of a charity in the formula transfer. The court noted that while the charitable aspect of the formula clause contributed to the court's decision in *Petter*, it was not determinative. Accordingly, the court stated that the lack of charitable component in a formula clause does not result in a "severe and immediate" public policy concern as required by *Commissioner v. Tellier*, 383 U.S. 687, 694 (1966).

E. *Estate of Wimmer v. Comm'r*

In *Estate of Wimmer v. Commissioner*, T.C. Memo 2012-157 (June 4, 2012), the Tax Court (Judge Paris) held that gifts of limited partnership interests over a five year period qualified for the gift tax annual exclusion under § 2053(b).

From 1996 though 2000, George Wimmer made gifts of limited partnership interests in the George H. Wimmer Family Partnership, L.P. to "related parties" as defined in the partnership agreement. While the partnership agreement generally restricts transfers of partnership interests and limits the instances in which a transferee may become a substitute limited partner, the agreement creates an exception for transfers to related parties. Interests may be transferred to “related parties” without the prior consent of the general partners and those transferees are admitted as partners without prior written consent.

The assets of the partnership consisted of publicly traded and dividend paying stock. The partnership made distributions to the limited partners in 1996,1997, and 1998 to pay federal income tax. Beginning in 1999, the partnership distributed all dividends, net of partnership expenses, to the partners in proportion to their partnership interests. Limited partners also had access to capital account withdrawal and in fact accessed those withdrawals.

The court analyzed whether the partnership interests constituted “present interests” in property that qualified for the annual exclusion under § 2053(b). The test is whether the transferee had the “unrestricted right to immediate use, possession, or enjoyment of property or the income from property.” Treas. Reg. § 25.2503-3(b). The court noted “the terms, ‘use, possess or enjoy’ connoted the right to substantial present economic benefit, that is, meaningful economic, as opposed to paper, rights.” Citing *Hackl*, the court stated that because interests in a business entity were being transferred, “[t]he Court must probe, among other things ‘whether the donees in fact received rights differing in any meaningful way from those that would have flowed from a traditional trust arrangement.’”

The court held that “the donees did not receive unrestricted and non-contingent rights to immediate use, possession, or enjoyment of the limited partnership interests themselves.” The holding was based primarily on the fact that transfers to non-related parties were restricted unless certain requirements were met.

The court next considered whether the donees received certain rights in the income. The estate had to prove that “(1) the partnership would generate income, (2) some portion of that income would flow steadily to the donees, and (3) that portion of income could be readily ascertained.” The court held that because (1) the partnership continued to receive dividends from its assets during the relevant time period, (2)(a) the general partners were required to distribution a portion of partnership income each year to satisfy the partners’ federal income tax liabilities and (b) distributions were required to be pro rata and some portion of partnership income was expected to flow to the partners each year, and (3) the partners could estimate their allocation of dividends on the basis of the stock’s dividend history and their percentage ownership in the partnership, the estate met its burden. A key fact was that the partnership held publicly-traded, dividend-paying stock and the partnership made income tax distributions to the partners for the first three years at issue, and the partnership distributed all dividends (net of expenses) to the partners in the remaining years at issue.

The court thus found that “the limited partners received a substantial present economic benefit sufficient to render the gifts of limited partnership interests present interest gifts on the date of each gift. Accordingly, the gifts qualify for the annual gift tax exclusion under § 2503(b).”

F. *Estate of Black v. Comm’r*

In *Estate of Black v. Commissioner*, T.C. Memo. 2012-63 (Mar. 8, 2012), the Tax Court (Judge Halpern) addressed additional deductions sought by the estate in the Rule 155 computation process. Its prior Opinion, the Tax Court rejected the IRS's attempt to apply § 2036 to the assets of a family limited partnership, rejected the estate's claim that interest on a Graegin note was deductible, and sustained estate tax deductions for Mrs. Black's estate of $577,500 for executor's fees paid to Samuel P. Black and $577,500 for legal fees paid to McDonald, Illig, Jones & Britton, LLP ("McDonald Illig"). *Estate of Black v. Comm'r*, 133 T.C. 15 (2009) ("*Black I*").

Prior to trial in *Black I*, the parties agreed that the estate would be entitled to additional deductions in the Rule 155 proceedings for reasonable and necessary administration expenses incurred after the filing of the estate tax return and before the close of the Tax Court proceedings. After trial, the estate submitted a Form 4421 to the IRS that outlined numerous additional fees incurred. The only deductions on the Form 4421 challenged by the IRS were (1) trustee's fees of $1,458,234 paid to Pat Black in his capacity as the trustee of the marital trust (whose assets were included in the gross estate) and (2) and $20,000 of estimated legal fees to McDonald Illig for reviewing and amending incoming tax returns that had been previously filed to address capital gains issues associated with the partnership valuation resolution in *Black I*.

As to the trustee fees, the court noted that the additional fees sought were in effect, further compensation for services already compensated to Mr. Black through the executor fees already allowed, since most of the services listed by Mr. Black's in his affidavit in support of the fee were duties performed by him as executor of Mrs. Black's estate. The court accepted that Mr. Black performed additional fiduciary services described in his affidavit, although it agreed with the IRS that all of the heavy lifting was done by outside advisors. The court allowed $140,000 of additional trustee fees, approximately one-half of the attorney fees paid to McDonald Illig which had been allowed by the Commissioner.

The court limited the deduction for McDonald Illig's anticipated fees to $5,000 (as opposed to $20,000) for its anticipated tax return review/preparation services.