CURRENT CHALLENGES TO THE FAMILY LIMITED PARTNERSHIP SCHEME FOR ESTATE PLANNING

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With careful planning, taxpayers can avoid IRS attacks on FLPs as estate planning vehicles.

Family limited partnerships (FLPs)[1] have been in "play" as an estate planning tool since at least the mid 1990's.[2] It is almost self-evident that the IRS considers the FLP as a device that has been much abused by taxpayers to depress values and rob the U.S. Treasury of funds to which it believes itself entitled. It is the quintessential device to prevent rich people from paying "their fair share." According to the Service, the FLP is more about achieving a " discount" on the value of the decedent's interest in the entity than about what it should be—a family investment/business succession plan.

Usual IRS attacks on family entities

Suspecting a nefarious objective by estate planners and their clients, the IRS has used a panoply of weapons to challenge the very formation of FLPs, as well as the discounting of the value of assets placed into such entities. Of course, these challenges almost always involve a decedent's estate, although occasionally the IRS may question the value reported on a gift tax return.

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These challenges generally have fallen into the following categories:

- Lack of economic substance.
- Lack of a "bona fide" arrangement (Section 2703).
- Assignee interest only at death (Section 2704(a)).
- Transferor's retain control (Section 2704 (b)).
- Retained life interest (Section 2036).
- Gifts on formation.
- Discounting the FLP interest.
- Step transaction theory.

Lack of economic substance. FLPs that have only readily marketable securities or passive investment assets are prone to attack as lacking a business purpose; at times, the IRS will argue that there is no economic substance to the FLP when entity formalities were not followed. This no longer seems to be an independent basis for attack but, as will be discussed below, is now part of the larger Section 2036(a) attack.

The IRS generally loses "lack of economic substance" arguments. If state law supports the creation of the entity, courts will not limit their utility. Even when a court has suspicions as to the non-tax motives for the creation of the entity, it usually recognizes the economic substance of the entity. Only when the IRS can clearly show that the entity formalities were not strictly followed—either in formation, operation, or making gifts—is the IRS successful.

Economic substance can be greatly enhanced by following the suggestions at the end of this article, which include documenting the business succession objectives of the new family entity, engaging the participation of younger family members, and documenting important business actions.

Section 2703. The operating agreement contains restrictions on the right to transfer underlying property that must be ignored unless the restrictions are (1) "bona fide" arrangements; (2) not a testamentary substitute; and (3) are similar to other arm's-length transactions.[3] The IRS has consistently lost in its attempts to have the entity ignored under Section 2703. Courts, however, will apply Section 2703 in valuation determinations based on transfer restrictions if the restrictions are greater than would be found in arm's-length transactions.[4]

Section 2704(a)—lapsing rights. Under this challenge, the IRS asserts that an operating agreement containing a provision that converts a decedent's or transferee's limited partnership interest to a non-voting, assignee interest only upon death may constitute a taxable transfer under Section 2704(a) as a non-permitted lapsing, liquidating or voting right. The IRS's argument based on Section 2704 (a) was raised for the first time in a 2000 Field Service Advisory (FSA 200049002),[5] but has not yet been addressed by any court.[6]

Section 2704(b). Restrictions on liquidation or withdrawal that are more restrictive than required by state law are to be ignored for valuation purposes when the transferor controls the entity. IRS challenges based on Section 2704(b) generally are ineffective in a properly structured entity, especially when states have changed their laws to make limited liquidation and withdrawal rights the default rule.[7]

Because of the IRS's lack of success in attacking discounts, Treasury has once again proposed that Section 2704(b) be expanded to "modify the rules with respect to discounting."[8] In effect, discounting would be impermissible in the FLP context unless the FLP contained an *active* trade or business. Thus, an FLP with only investment assets would no longer be eligible for minority-interest or lack-of-marketability discounts.

While this matter remains on the Treasury wish list, it was not part of the Fiscal Cliff negotiations in 2011. It could, however, be included in either a broad overhaul of the Code (that both Republicans and Democrats profess to want) or, perhaps more likely, as part of the ongoing fight over Republicans' demand for spending cuts in return for further raising the debt ceiling.

Section 2036. Under Section 2036(a)(1), the gross estate of a decedent will include, at date-of-death value, all assets over which the decedent has retained, by express or implied agreement, the right to control the possession, use or enjoyment. Section 2036(a)(2) separately mandates inclusion of all assets over which the decedent had the right, either alone or in conjunction with others, to designate the person who shall possess or enjoy the property or income thereof. The IRS has met with considerable success in challenging family entities under Section 2036, primarily because it has litigated only the most abusive cases.

In the latest taxpayer loss, *Estate of Liljestrand*,[9] an FLP established seven years prior to death was disregarded, in part because the accountants did not know of, or account for, the FLP's existence for four years after its formation. The Tax Court concluded that the transfer to the FLP was not a bona fide sale for significant non-tax reasons when:

- Only one partnership meeting was held since the partnership's formation, and no minutes were ever kept.
- The decedent failed to treat the partnership as a separate entity, and he used FLP assets to pay personal expenses.

[1] This article uses the term, family limited partnership or family limited liability company, interchangeably as the FLP.

[2] One of the first Tax Court decisions to address the use of FLPs as an estate planning device was Estate of Schauerhamer TCM 1997-242, which applied Section 2036(a) to cause FLP units previously given as gifts to be included in the decedent's estate.

[3] Section 2703(b)

[4] Holman, 130 TC 170 (2008), aff'd 601 F.3d 763, 105 AFTR 2d 2010-1802 (CA-8, 2010) (restrictions ignored because entity was formed solely to hold Dell stock, and was not a bona fide business).

[5] FSA 200049002. FSAs are non-binding, non-precedential guidance to IRS auditors.

[6] In Estate of Reichart, 114 TC 144 (2000), the IRS raised Section 2704(a), but the court failed to reach the issue

[7] See e.g. Kerr, 113 TC 449 (1999). In Holman, *supra* note 4, the IRS abandoned reliance on Section 2704(b) at trial.

[8] The Treasury Department's "General Explanations of the Administration's Fiscal Year 2010 Revenue Proposals" (popularly called the "Greenbook") was released on 5/11/09. At pages 119-23, three revenue-raising proposals are described under the heading "Modify Estate and Gift Tax Valuation Discounts and Make Other Reforms."

[9] TCM 2011-259.

- The transfer was not for good and adequate consideration.
- The interests credited to each partner were not proportionate to the fair market value of the assets contributed by the partner.
- The assets contributed by each partner were not properly credited to their respective capital accounts.
- The court found "especially significant that [the FLP] failed to maintain capital accounts upon formation of the partnership in 1997 and used neither the values established in the…appraisal nor the fair market value of the real estate to establish the value of each partner's [FLP] interest."

Having concluded that the transfer was not a bona fide sale for adequate and full consideration, the court found that the decedent retained the possession or enjoyment of, or the right to income from, the property he transferred to the FLP when:

The IRS has consistently lost in its attempts to have the entity ignored under Section 2703.

- The decedent used partnership assets to pay personal expenses.
- Although the decedent retained some assets outside the FLP, he lacked sufficient funds outside of the FLP to maintain his lifestyle and to satisfy his future obligations.
- The decedent transferred nearly all of his assets to the FLP.
- The decedent's relationship to the assets remained the same before and after the transfer.
- The FLP served as an alternate vehicle through which the decedent was able to provide for his children at his death.
- Under the FLP, the decedent was guaranteed a preferred return of 14% of the value of his Class A limited partnership interest, i.e., to $43,400. The appraisals estimated the FLP's annual income would equal $43,000. The guaranteed return was indicative of an agreement to retain an interest or right in the contributed property.

In *Estate of Stone*,[10] a case in which the taxpayer emerged victorious, the decedent and her husband owned large tracts of undeveloped woodlands. After construction of a dam, the woodlands abutted the resulting lake and, as a family asset, took on new importance as a potential development project. The decedent wanted to give portions of the land each year to her children and, on advice of counsel, formed an FLP as a more convenient and efficient way to make gifts.

Essential ingredients of the FLP were:

- The FLP placed substantial restrictions on transferability by limited partners. The general partner (the decedent) had considerable power to decide on distributions. The general partner could be dismissed only on a vote of two-thirds of the limited partners.
- Between 1997 and 2000, the decedent retained only 2% of the LP units and all the general partner units.
- During the term of the FLP, two of the children divorced and, in each instance, some of the woodland property was taken out of the FLP and transferred to the former spouse to ensure that the former spouse would not be a member of the FLP. However, the quitclaim deeds executed by the former spouses were not to the FLP, but to the spouse.
- There was no development of the woodlands. The FLP had a bank account, but it was closed after a couple of years. The FLP's only expense was property taxes, which the decedent paid from his personal funds.

The IRS argued that the transfers to the FLP fell within Section 2036 because it was not a bona fide sale for adequate consideration and the decedent retained an interest or right to the property or income of the property transferred. The Tax Court rejected the IRS claims and upheld the FLP. The transaction met the bona fide sale exception because the transaction had significant nontax motives. The court listed the factors to be considered in determining nontax motives:

- The decedent standing on both sides of the transaction.
- The decedent's financial dependence on distributions from the FLP to maintain lifestyle.
- The commingling of partnership funds with funds used for personal activities.
- The failure to transfer title to the property to the FLP.
- The discounting of the value of the units received versus the underlying value of the property transferred to the FLP.
- The decedent's age and physical condition at the time of creation.

The court again noted that there are two prongs in determining whether the bona fide sale exception exists:

1. Whether the transaction qualified as a bona fide sale.

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[10] TCM 2012-48.

[11] Citing Estate of Bongard 124 TC 95 (2005).

[12] TCM 2012-73.

2 Whether the decedent received adequate and full consideration.

The court noted that while gift-giving is not a valid business purpose for the establishment of an FLP, in this case, there were other motives as well, such as creation of a "family asset" to be managed by family members. The court also found that the decedent received fair value for the property contributed to the FLP.

In the children's divorce proceedings, the court did find that the formalities of the FLP were not respected. However, it found other factors to support the bona fide sale exception:

- The decedent neither transferred all her assets to the FLP nor was she dependent on the FLP to maintain her lifestyle.
- Title to the woodland property had been placed in the FLP.
- Although the decedent was over age 70 when the FLP was formed, she lived for more than seven years and her husband was still alive at the time of the trial in 2011.
- There was no discounting of the value of the partnership interests.
- The Court distinguished *Estate of Liljestrand*, noting that, while the decedent was on both sides of the transaction and controlled the FLP, "[t]he transaction is arm's length when mutual and legitimate and significant nontax reasons exist for the transaction and the transaction is carried out in a way in which unrelated parties to a business transaction would deal with each other."[11]

In *Estate of Kelly*[12] (another taxpayer win), the decedent was actually incompetent when the FLPs were created; the plan was approved by the probate court to further her desire to have her estate equally divided among children when changes in asset values since the date of execution of the will would have resulted in unequal distributions of value to her children. One of the FLPs contained a quarry where the issue of personal liability had been a continuing issue.

The general partner was a corporation, owned 100% by the decedent, but managed by her children. The management fee was a fixed percentage of the assets of the various FLPs; while there could have been distributions to the decedent, none were made to her as the shareholder of the corporate general partner. Nonetheless, the IRS claimed that payment of any management fee to the entity was an impermissible retention of control in the property, thereby implicating Section 2036(a).

As to the partnerships, the IRS contended that they lacked any business purpose and the transfers were not for full value. The IRS asserted that the decedent retained the right to control distributions through the corporate general partner. The IRS assessed a $2 million deficiency.

The Tax Court rejected the IRS arguments, concluding that:

- The estate plan was not principally motivated by estate tax savings. However, the probate court approved the plan in part on the assertion in the pleadings that nearly $3 million in estate tax would be saved if the court approved the plan.
- There were significant issues of potential personal liability with respect to the real estate, especially the quarry, and there were significant nontax reasons to place active real estate in an entity for purposes of management.
- The decedent received fair value for her interests in the various FLPs, and the capital accounts of her interest properly credited her for all the property contributed.
- The decedent's subsequent gifts of FLP units were properly valued and reflected in Forms 709 filed for the three years prior to death. Thus, only the LP interests in several of the FLPs she continued to own at death were required to be included in her estate for estate tax purposes.
- All formalities of the various entities were respected.
- Most importantly, the decedent did not contribute all her assets to the FLPs, retaining more than $1.1 million in liquid assets to pay all her personal needs, thereby negating any assertion that she needed FLP assets to maintain her lifestyle or pay personal expenses. Neither the FLP nor the corporate manager paid any of the decedent's personal expenses.
- There was no Section 2036 issue in the payment of the management fee when the fee was commercially reasonable and, in fact, services were rendered by the managers as contemplated by the management agreement.

Thus, the court concluded that the IRS's assertion that there was an implied agreement to retain an interest in the assets or income of the various FLPs was without basis.

Gifts on formation. At the time of formation of the entity, the decedent made a gift of assets because, in taking back only discounted LP units and giving up control, it is an inherent transfer at less than full value. The IRS has consistently lost the argument that a gift necessarily occurred on creation and funding because of discounts in the value of entity units when the entity was properly created and all other formalities followed.

Discounting the FLP interest. The IRS regularly contests claimed valuation discounts greater than 30% to 35%. It does not generally challenge discounts less than 20%, but seems to be trying to limit discounts to minority interests discounts and to eliminate any consideration of discounts for lack of marketability. However, FSA 200049003 concedes that it might not be able to do so:

Courts hate valuation discount fights. From time to time, the Tax Court threatens to hold entirely for one side or the other. In most cases, however, the court finds some middle ground. Valuation discount cases are highly fact specific, and usually arise in the context of a gift tax return. Discounts have been limited to as little as 15%[13]

Valuation discounts are almost always allowed to some extent if the entity is not ignored on some other grounds.

In Keller,[14] the Fifth Circuit affirmed a district court decision that an estate was entitled to an estate tax refund of $115 million for the discounted value of an FLP that was created during the decedent's lifetime but not fully funded until after the decedent's death. The Fifth Circuit concluded that the FLP was "deemed" to be funded as of the decedent's date of death under applicable state law (Texas), when the "intent of an owner to make an asset partnership property will cause the asset to be the property of the partnership."

The decedent and her husband created joint revocable trusts. Following her husband's death, the decedent was advised that creating an FLP would provide additional protection for her family's assets. The decedent decided to create and fund an FLP with approximately $250 million of cash and bonds, but did not actually transfer the funds to the FLP during her lifetime. The decedent's advisors, working under the impression that the FLP had not been funded, advised the estate to sell $147.8 million of bonds to pay the federal estate tax due.

A year later, one of the decedent's advisors attended a seminar and learned that under Texas law the FLP may have been considered to have been funded at the time of the decedent's death. As such, the estate proceeded to complete any formalities associated with creating and funding the FLP. Because the bonds were deemed to be FLP property, the advisors retroactively structured the sale and payment of estate tax as a loan from the FLP to the estate in exchange for a promissory note payable to the FLP, effective as of the date of the loan.

In addition to the discount allowed in valuing the FLP interest owned by the estate, the Fifth Circuit found that the interest payable to the FLP under the promissory note from the estate was a properly deductible expense of the estate. This determination was made by distinguishing a holding by the Tax Court under similar facts in *Estate of Black*.[15]

Unlike in *Estate of Black*, the estate in *Kelly* did not have to redeem FLP units to satisfy the loan because it had sufficient other illiquid assets to repay its debt to the FLP. As a result, the interest payable to the FLP was properly deductible by the estate. The Fifth Circuit also rejected the IRS argument that the loan should be ignored because the entities—the estate and the FLP—were under common control and little more than a pretense.

The court noted that, after the sale of the bonds to the FLP, the bonds were no longer estate assets. After realizing (after the fact) that the estate had sold off FLP assets, the estate was forced to rectify its mistake. Lacking liquid assets, it borrowed money from the FLP. The court refused to collapse the estate and FLP to functionally the same entity simply because each entity was controlled by substantially similar (although not identical) persons.

Step transaction theory. This theory posits that the gifts of the LP units are tantamount to gifts in the assets contributed to the entity—and thus the entity should be ignored. The IRS has not been successful in asserting indirect gifts when the formalities of the entity are followed in formation and funding as well as making gifts. However, when the gifts of LP units were made the same day the entity was formed and funded—or even where the gifts were made prior to the completion of formation formalities, the IRS has met with some success.[16]

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[13] Knight, 115 TC 506 (2000).

[14] 104 AFTR2d 2009-6015, *aff'd* 697 F.3d 238, 10 AFTR 2d 2012-6061 (CA-5 2012).

[15] 133 TC 340 (2009).

[16] Compare Senda, TCM 2004-160, *aff'd,* 433 F.3d 1044, 97 AFTR 2d 2006-419 (CA-8, 2006) with Holman, *supra* note 4. There were no indirect gifts when FLP units were given as gifts five days after formation of FLP.

[17] 142 F.2d 824, 32 AFTR 750 (CA-4, 1944),

[18] TCM 2012-88.

The value adjustment clause

Because of the 1944 decision of the Fourth Circuit in *Procter*, taxpayers had no hope until recently of seeking to adjust the value of gifts of FLP partnership units if, after audit, the IRS challenged the valuation and determined that the units had a higher per unit value than that reflected on the gift tax return.

Procter.[17] In *Procter*, the following language was set forth in the gift and assignment document:

> The settlor is advised by counsel and satisfied that the present transfer is not subject to Federal gift tax. However, in the event it should be determined by final judgment or order of a competent federal Court of last resort that any part of the transfer in trust hereunder is subject to gift tax, it is agreed by all the parties hereto that in that event the excess property hereby transferred which is decreed by such Court to be subject to gift tax, shall automatically be deemed not to be included in the conveyance in trust hereunder and shall remain the sole property of Frederic W. Procter free from the trust hereby created.

Thus, the transaction would be partially unwound if a court determined that the transaction was a taxable gift.

The Tax Court did not object to the arrangement, but the Fourth Circuit rejected the notion that the transaction could be effectively unwound if it found the transaction was indeed subject to gift tax. The court found such a provision to be against public policy:

> In the first place, [the provision] has a tendency to discourage the collection of the tax by the public officials charged with its collection, since the only effect of an attempt to enforce the tax would be to defeat the gift. In the second place, the effect of the condition would be to obstruct the administration of justice by requiring the Courts to pass upon a moot case. If the condition was valid and the gifts were held subject to tax, the only effect of the holding would be to defeat the gift so that it would not be subject to tax. The donor would thus secure the opinion of the Court as to the taxability of the gift, when there would be before the Court no controversy whatever with the taxing authorities which the Court could decide, the only possible controversy being as to the validity of the gift and being between the donor and persons not before the Court. In the third place, the condition is to the effect that the final judgment of a Court is to be held for naught because of the provision of an indenture necessarily before the Court when the judgment is rendered. It should be remembered that it is not possible to obtain a declaratory judgment from a federal Court as to whether the gift in question is subject to the gift tax.

While there have been several cases sanctioning adjustment clauses in the context of a remainderman charity, for the most part, all attempts by taxpayers to readjust a gift transaction depending on the scrutiny of the IRS have met with failure, irrespective of the method employed to rescind the gift or to require the donee to make a payment for the "excess value."

Wandry.[18] Recently, the Tax Court has set forth a path for adjusting the value of the gift of FLP units if a challenge to the discount claimed is successfully challenged by IRS on audit. In *Wandry*, a couple established an FLP and embarked on a program of making gifts of FLP interests annually. Their estate planning attorney advised them that (1) the number of FLP units equal to the desired value of their gifts on any given date could not be known until a later date when a valuation of the FLP's assets could be made, (2) all gifts should be given as specific dollar amounts rather than specific numbers of membership units, and (3) all gifts should be given on December 31 or January 1 of a given year, so that a midyear closing of the books would not be required. Based on this advice, the following formula clause was used to set the amount of the annual transfers:

> 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.

Consistent with the transfer documents, the gift tax returns reported total gifts of $1,099,000, and the schedules supporting the gift tax returns reported net transfers from each spouse of $261,000 and $11,000 to their children and grandchildren, respectively. The schedules, however, described the gifts to the children and grandchildren as percentage interests in the FLP (not specific dollar amounts). The couple's accountant had derived these percentage interests based on an appraisal valuing a 1% interest in the FLP. The IRS audited the couple's 2004 gift tax returns and determined a deficiency based on the percentage interests listed in the schedules to each spouse's gift tax returns.

At trial, the IRS alleged that the couple was liable for the deficiency amount because (1) the gift descriptions, as part of the gift tax returns, are admissions that they transferred fixed FLP percentage interests to the donees; (2) the FLP's capital accounts control the nature of the gifts, and the FLP's capital accounts were adjusted to reflect the gift descriptions; and (3) the gift documents themselves transferred fixed FLP percentage interests to the donees. The IRS further argued that the formula clause created a condition subsequent to the completed gifts and was void for federal tax purposes as contrary to public policy, citing *Procter.*

The Tax Court quickly dispensed with the IRS's first two arguments.

First, the court noted that the description of the gifts on the gift tax return was consistent with the gift tax documents transferring a specific dollar amount of FLP interests. Second, regarding capital accounts being adjusted related to specific percentages, the court determined that the adjustments in the capital accounts were "tentative" and subject to change once final values were determined. Therefore, it concluded that the capital accounts did not control the nature of the gifts by the couple.

The court next addressed the validity of the valuation adjustment clause. It first took note that other federal courts have held that formula clauses were valid to limit the value of a completed transfer.[19] The court then reviewed its opinion in *Petter* regarding its examination of *Procter* and other cases, to draw a distinction between a "savings clause," which a taxpayer may not use to avoid gift tax, and a "formula clause" (in the form of a definitive value), which was valid to limit the value of the assets transferred.

> A savings clause is void because it creates a scenario in which the taxpayer tries to take property back. On the other hand, a formula clause is valid because it merely transfers a fixed set of rights with uncertain value. The difference depends on an understanding of what the donor was trying to transfer.

The *Wandry* court reasoned that as of the date of the transfer, each donee was entitled to a predefined FLP percentage interest expressed through a formula. The transfer documents do not allow the petitioners to take property back. Instead, the documents correct the allocation of FLP membership units among the taxpayers and the donees because the appraisal of the FLP understates the FLP's value. Therefore, the court ruled that the formula clauses were valid.

The court next addressed the public policy concerns expressed in *Procter.* It concluded that there was no well-established public policy against formula clauses. The court reasoned that the IRS's role is to enforce tax laws, not merely to maximize tax receipts. Additionally, the court pointed to mechanisms outside the IRS audit that exist to ensure accurate valuation reporting, especially the fact that the members of the FLP had an interest in ensuring that they were allocated their fair share of profits and not allocated any excess losses.

The IRS originally filed a notice of appeal of the decision—which would have gone to the Fifth Circuit—but then withdrew the appeal. On 11/13/12, the IRS issued a notice that it will not acquiesce to the decision, indicating that in future cases with similar facts it will contest any valuation formula as being tantamount to a savings clause.

Hackl and its progeny: tension between present interest treatment and valuation discounts.

There is no question that two of the principal reasons that have spurred the growth of FLPs are the ability (1) to discount the value of assets placed into the partnership and/or the partnership units from the underlying value of the partnership assets and (2) to leverage the annual exclusion gifts by the use of discounted values.

As discussed repeatedly, the IRS has never reconciled itself to the notion that assets lose value when placed inside an FLP. Much to its consternation, the Tax Court and, for the most part, federal appellate courts have rejected the IRS's underlying premise. It is only when the IRS has been able to convince courts that a partnership is defectively formed, structured, or operated that the entity is either actually or effectively disregarded for purposes of valuation discounts.

The IRS, however, may have finally hit on a new strategy to defeat one of the principal benefits of the FLP—forcing the partnership to be structured in a way that will either qualify gifts of partnership units as gifts of present interest or qualify the units for large discounts; in no event will the FLP be allowed to be structured to qualify for both.

Annual exclusion gifts require that the gift be a "gift of a present interest." It has long been

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[19] Estate of Christiansen, 130 TC 1 (2008), *aff'd,* 586 F.3d 1061, 104 AFTR 2d 2009-7352 (CA-8, 2009); Estate of Petter, TCM 2009-280, *aff'd,* 653 F.3d 1012, 108 AFTR 2d 2011-5593 (CA-9, 2011); and McCord, 461 F.3d 614, 98 AFTR 2d 2006-6147 (CA-5, 2006).

[20] Crummey, 397 F.2d 82, 22 AFTR2d 6023 (CA-9, 1968); Rev. Rul. 73-405, 1973-2 CB 321.

[21] 18 TC 279 (2002).

[22] Hackl, 335 F3d 664, 92 AFTR 2d 2003-5254 (CA-7, 2003).

[23] TCM 2010-2.