JURISDICTION:	**OKLAHOMA TAX COMMISSION DECISION**
CITE:	**2007-02-13-04 / NON-PRECEDENTIAL**
ID:	**P-04-052-H**
DATE:	**FEBRUARY 13, 2007**
DISPOSITION:	**SUSTAINED IN PART / DENIED IN PART**
TAX TYPE:	**ESTATE**
APPEAL:	**AFFIRMED / OK S.CT. 104,409 / CERT. DENIED**
CITE:	**2008 OK CIV APP 85, 195 P.3d 1280**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On April 9, 2004, the protest file was received by this office for further proceedings consistent with the Uniform Tax Procedure Code[1] and the Rules of Practice and Procedure Before the Oklahoma Tax Commission.[2] On April 13, 2004, a letter was mailed to the Estate stating that this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-04-052-H. The letter also advised the Estate that a Notice of Prehearing Conference would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Oklahoma Tax Commission.* On April 28, 2004, the Notice of Prehearing Conference was mailed to the last known address of the Estate, setting the prehearing conference for May 25, 2004, at 2:30 p.m.[3] The prehearing conference was held as scheduled and the parties were directed to submit a status report in sixty (60) days. (The Procedural History from May 26, 2004, through June 6, 2006, is being omitted herein.)

On June 7, 2006, an Amended Scheduling Order was issued setting this matter for hearing on August 17, 2006, at 9:30 a.m. On August 10, 2006, the Estate's Pre-Hearing Brief and the Position Memorandum of the Division were filed. On August 16, 2006, the parties filed Stipulation of Facts. On August 16, 2006, the Division filed a Bench Brief and Admissions of [Estate] in Exhibits and Stipulations and Other Portions of Exhibits and Stipulations to Which the Tribunal's Attention is Called.

A closed hearing[4] was held as scheduled on August 17, 2006, at approximately 9:30 a.m. The Division invoked the "Rule of Sequestration of Witnesses."[5] The Estate called two (2)

[1] OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

[2] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47 (June 11, 2005).

[3] OKLA. STAT. ANN. tit. 68, § 208 (West 2001).

[4] The Estate invoked its right to a confidential hearing as provided by OKLA. STAT. ANN. tit. 68, § 205 (West Supp. 2006).

[5] OKLA. STAT. ANN. tit. 12, § 2615 (West Supp. 2006). Tr. at 18-20. The undersigned instructed the witnesses for both parties "not to discuss the case or testimony with any of the witnesses."

witnesses, ATTORNEY, Attorney,[6] who testified regarding the planning of the Estate, the Jointly Stipulated Facts and Exhibits 1 through 101, and the Estate's Exhibits 1 through 4, and LAW PROFESSOR,[7] University of Oklahoma College of Law, who testified as an expert witness on Oklahoma Estate Tax. The Division called one witness, AUDITOR, Auditor, Estate Tax Section of the Audit Division, Oklahoma Tax Commission, who testified regarding the records of the Division. Joint Exhibits 1 through 101 were identified, offered, and admitted into evidence. The Estate's Exhibits 1 through 4 were identified, offered, and admitted into evidence. Upon conclusion of the hearing, the record was held open.

On September 1, 2006, the parties were advised by letter that the transcript of the hearing held on August 17, 2006, at 9:30 a.m. had been received in this office and that the parties could file, on or before October 2, 2006, proposed findings of fact and conclusions of law, as well as post-hearing briefs. On October 2, 2006, the parties filed proposed findings of fact and conclusions of law, along with post-hearing briefs. The record in this matter was closed and the case was submitted for decision on October 2, 2006.

[6] Tr. at 21-22. ATTORNEY has a degree in business administration from the University of Oklahoma, a law degree from the University of Oklahoma College of Law, and an LLM from Yale University (1963). The focus of ATTORNEY'S practice is tax, corporate, wealth transfer planning, and corporate financial planning. ATTORNEY is a member of the American Bar Association, Oklahoma Bar Association, Oklahoma County Bar Association, and Texas Bar Association. ATTORNEY graduated from the University of Oklahoma College of Law in 1959, served three years in the United States Air Force, Judge Advocate's Office, as a lawyer, spent a year at Yale Law School, practiced law in the State of Texas for approximately two and a half years, and moved to Oklahoma City in 1966 to join the Oklahoma City firm of LAW FIRM of which is currently a Shareholder. ATTORNEY is listed in "Best Lawyers" in Oklahoma under the categories of tax and corporate.

[7] Tr. at 98-103. LAW PROFESSOR has an undergraduate degree in mathematics from the College of William & Mary, a law degree from Arizona State University College of Law, graduating in 1977 *magna cum laude*. LAW PROFESSOR practiced law in the State of Iowa for a couple of years before attending NYU, where he obtained an LLM in taxation in 1982. After graduating from NYU, LAW PROFESSOR spent a short period of time practicing in Richmond, Virginia, and in 1983 practiced law for a 15 person firm in Muscatine, Iowa, from 1983 to 1987, where he became a partner of the firm. In 1985, LAW PROFESSOR, in association with his wife, had computer programs published by Shepard's/McGraw-Hill to prepare federal estate tax returns and later programs for gift tax returns and fiduciary income tax returns. LAW PROFESSOR'S areas of practice were taxation, estate taxation, estate administration, and estate planning. LAW PROFESSOR began teaching at the University of Oklahoma College of Law in 1987, where he is currently a tenured professor. LAW PROFESSOR teaches courses in wills and trusts, wealth transfer tax (estate tax), and estate planning. LAW PROFESSOR also teaches courses on income tax and income taxation of trust of estates. During his tenure at the University of Oklahoma College of Law, LAW PROFESSOR has published many articles, including four articles dealing specifically with the Oklahoma estate tax and Oklahoma estate trust administration. LAW PROFESSOR has also served as a consultant to the Estate Tax Division of the Oklahoma Tax Commission in a contested matter, and as a litigation consultant in other matters. This was LAW PROFESSOR'S first time to testify at a hearing. LAW PROFESSOR was qualified as an expert witness over the objection of the Division, which was noted for the record.

STIPULATION OF FACTS

On August 16, 2006, the parties stipulated to the following facts[8] as being true and correct and as to the authenticity of the documents under separate cover and identified as Joint Exhibits 1 through 101, inclusive. The Division and the Estate agreed that this stipulation and the Joint Exhibits shall be jointly offered by them in evidence at the evidentiary hearing on the merits to be conducted before an Administrative Law Judge, with all evidentiary objections to the facts stipulated to herein and to the Joint Exhibits, except as to relevance and materiality, being hereby waived, as follows, to-wit:

Personal History

1. DECEDENT was born on January 12, 1933, in Oklahoma City, Oklahoma.

2. Following his secondary education, DECEDENT graduated from the University of Oklahoma in 1954, and became employed by INSURANCE COMPANY, an Oklahoma corporation, a company in which DECEDENT'S father, FATHER, had, in 1916, acquired controlling interest and become Chief Executive Officer.

3. Stuart married FIRST WIFE on May 31, 1952. They had four children: DAUGHTER 1 (born August 20, 1954), DAUGHTER 2 (born July 27, 1956), DAUGHTER 3 (born July 27, 1956), and DAUGHTER 4 (born June 2, 1960).

4. Over the course of his employment at INSURANCE COMPANY, DECEDENT came to be the owner of a substantial amount of the capital stock of INSURANCE COMPANY, and, following the death of his father on May 23, 1957, DECEDENT inherited his father's INSURANCE COMPANY stock and became the Chief Executive Officer of INSURANCE COMPANY.

5. Prior to his father's death, DECEDENT became the owner of portions of the extensive ranch lands, and the improvements and equipment thereon (the "FAMILY RANCH"), located in COUNTY A, COUNTY B, AND COUNTY C, Oklahoma, some of which had been in the family since 1868, and upon his father's death, DECEDENT became the owner of the remaining portions of the FAMILY RANCH. At all times relevant hereto, the FAMILY RANCH was an established business that conducted business in Oklahoma and had a business situs in Oklahoma.

6. DECEDENT and FIRST WIFE were divorced on January 9, 1969.

7. FIRST WIFE then married SECOND HUSBAND in 1972. SECOND HUSBAND thereafter adopted DAUGHTER 4 whose name then became ADOPTED DAUGHTER 4.

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[8] The text of the stipulated facts is set out *in haec verba*. "***in haec verba***" (in heek **v<<schwa>>r**-b<<schwa>>). [Latin] In these same words; verbatim. BLACK'S LAW DICTIONARY (8th ed. 2004), available at http://westlaw.com (October 18, 2006).

8. On November 1, 1969, DECEDENT married SECOND WIFE, and on February 14, 1972, they were divorced. One child was born of this marriage, SON (born January 27, 1971).

9. On November 1, 1973, DECEDENT remarried SECOND WIFE, and on July 8, 1974, they were divorced. No children were born of this remarriage.

10. DECEDENT married THIRD WIFE in November 1975, and she died on March 25, 1978. No children were born of this marriage.

11. On June 26, 1980, DECEDENT married FOURTH WIFE. No children were born of this marriage. FOURTH WIFE had two daughters from a prior marriage, STEPDAUGHTER 1 (born February 7, 1965) and STEPDAUGHTER 2 (born August 17, 1968).

12. In 1986, UTILITY COMPANY, a Florida corporation, a publicly-traded public utility company, acquired INSURANCE COMPANY in a tax-free reorganization resulting in INSURANCE COMPANY'S becoming a wholly-owned subsidiary of UTILITY COMPANY, and in DECEDENT'S acquiring 2,787,829 shares of UTILITY COMPANY stock with very little income tax basis in the shares. At that time, DECEDENT was also appointed to the Board of Directors of UTILITY COMPANY.

13. In 1988, DECEDENT and his wife, FOURTH WIFE, moved their residence and domicile from Oklahoma City, Oklahoma, to Dallas, Texas, and they remained residents and domiciliaries of Dallas, Texas until the time of DECEDENT'S death in 2001.

14. In December 2000, DECEDENT sold 2,788,366 shares of UTILITY COMPANY stock (which included shares that DECEDENT had acquired as stock dividends as a UTILITY COMPANY director) for $75,709,317, resulting in a taxable gain of $75,594,981.

15. In May of 2001, DECEDENT was medically diagnosed with terminal cancer.

16. DECEDENT died in his Dallas, Texas residence on August 30, 2001, at the age of 68 years. City of Dallas, Texas-Certificate of Death of DECEDENT, Joint Exhibit 1. His funeral and burial took place in Oklahoma City, Oklahoma.

Creation of 1958 Irrevocable Trusts for DECEDENT Children

17. On January 14, 1958, DECEDENT, as settlor, executed an irrevocable trust agreement that created three separate irrevocable trusts for his three children, DAUGHTER 1, DAUGHTER 2, and DAUGHTER 3, with provision that the separate trusts be further divided if DECEDENT should have other children. Accordingly, separate trusts were created thereafter for DAUGHTER 4 and SON, respectively. DECEDENT [Children] Trusts Irrevocable Trust Agreement dated January 14, 1958, Joint Exhibit 2. Each of these trusts were funded with substantial gifts of INSURANCE COMPANY stock. DECEDENT was the initial trustee of each of these trusts.

18. On October 21, 1986, PREDECESSOR BANK, a national banking association, a predecessor to BANK, a national banking association, ("BANK ") was appointed to serve as co-trustee with DECEDENT of each of the separate trusts created under the DECEDENT [Children] Trusts Irrevocable Trust Agreement dated January 14, 1958. Appointment of Co-Trustee, dated October 21, 1986, Joint Exhibit 3 BANK later succeeded PREDECESSOR BANK as co-trustee, and on June 26, 2001, BANK became sole trustee. See paragraph 30, below.

19. On February 27, 1987, DECEDENT made gifts of UTILITY COMPANY stock to each child's trust (other than the DAUGHTER 4 Trust) created under the DECEDENT [Children] Trusts Irrevocable Trust Agreement dated January 14, 1958, and filed a federal gift tax return respecting such gifts. Form 709, United States Gift (and Generation Skipping Transfer) Tax Return for 1987, Joint Exhibit 4.

Creation of 1987 Irrevocable Trusts for DECEDENT Stepdaughters

20. On February 27, 1987, DECEDENT, as settlor, executed an irrevocable trust agreement that created two separate irrevocable trusts for his stepdaughters, STEPDAUGHTER 1 and STEPDAUGHTER 2. DECEDENT [Stepdaughters] Trusts Irrevocable Trust Agreement dated February 27, 1987, Joint Exhibit 5. These trusts were funded with substantial gifts of UTILITY COMPANY stock. Such gifts were also reported in the federal gift tax return for 1987, Joint Exhibit 4, above.

21. On February 27, 1987, PREDECESSOR BANK was appointed to serve as co-trustee with DECEDENT of each of the separate trusts created under the DECEDENT [Stepdaughters] Trusts Irrevocable Trust Agreement dated February 27, 1987. Letter dated February 27, 1987, Joint Exhibit 6. BANK later succeeded PREDECESSOR BANK as co-trustee, and on June 26, 2001, BANK became sole trustee. See paragraph 30, below.

22. On September 25, 1998, DECEDENT made additional gifts of UTILITY COMPANY stock to each stepdaughter's trust created under the DECEDENT [Stepdaughter] Trusts Irrevocable Trust Agreement dated February 27, 1987, and filed a federal gift tax return respecting such gifts. Form 709, United States Gift (and Generation Skipping Transfer) Tax Return for 1998, Joint Exhibit 7.

Execution of Prior Will

23. On July 12, 2000, DECEDENT executed a will. Last Will and Testament of DECEDENT, Joint Exhibit 8.

DECEDENT Contacts ATTORNEY and BANK

24. In June, 2001, DECEDENT contacted ATTORNEY, attorney, and the Trust Department of BANK.

25. In June, 2001, DECEDENT had discussions with ATTORNEY regarding an estate plan. A BANK trust officer attended some of the discussions.

Creation and Dissolution of CAPITAL CORP., an Oklahoma corporation

26. On June 21, 2001 at 3:21 p.m., a Certificate of Incorporation for CAPITAL CORP., an Oklahoma corporation, was filed with the Oklahoma Secretary of State. The Certificate of Incorporation was signed by ATTORNEY, incorporator. The registered agent of the corporation was LAW FIRM at LAW FIRM ADDRESS. CAPITAL CORP. Certificate of Incorporation dated June 21, 2001, Joint Exhibit 9.

27. On June 27, 2001, a Certificate of Dissolution of CAPITAL CORP., an Oklahoma corporation, was filed with the Oklahoma Secretary of State. The Certificate of Dissolution was signed by ATTORNEY, Sole Incorporator of CAPITAL CORP., an Oklahoma corporation. Certificate of Dissolution of CAPITAL CORP. dated June 27, 2001, Joint Exhibit 10.

Creation and Cancellation of RANCH PARTNERSHIP L.P., an Oklahoma limited partnership

28. On June 21, 2001, at 3:25 p.m., a Certificate of Limited Partnership for RANCH PARTNERSHIP L.P., an Oklahoma limited partnership, was filed with the Oklahoma Secretary of State. The Certificate of Limited Partnership identified CAPITAL CORP., an Oklahoma corporation, located at RANCH ADDRESS as the Sole General Partner of the Partnership. The Certificate of Limited Partnership was signed by ATTORNEY, Vice President of CAPITAL CORP., an Oklahoma corporation. The registered agent of the Partnership was LAW FIRM at LAW FIRM ADDRESS. RANCH PARTNERSHIP L.P. Certificate of Limited Partnership dated June 21, 2001, Joint Exhibit 11.

29. On June 27, 2001, a Certificate of Cancellation of RANCH PARTNERSHIP, L.P., an Oklahoma limited partnership, was filed with the Oklahoma Secretary of State. The Certificate of Cancellation was signed by ATTORNEY, Vice President of CAPITAL CORP., an Oklahoma corporation, and stated that the "Partnership has been cancelled due to the withdrawal of the General Partner." Certificate of Cancellation of RANCH PARTNERSHIP L.P., Joint Exhibit 12.

DECEDENT'S Resignation as Co-Trustee of the 1958 and 1987 DECEDENT Trusts

30. On June 26, 2001, DECEDENT resigned as co-trustee of each child's trust created under the DECEDENT [Children] Trusts Irrevocable Trust Agreement dated January 14, 1958, and each stepdaughter's trust created under the DECEDENT [Stepdaughter] Trusts Irrevocable Trust Agreement dated February 27, 1987, leaving BANK, as sole trustee of each of the trusts. DECEDENT [Children] Trusts Created Under Trust Instrument Dated January 14, 1958 Trustee's Resignation, Joint Exhibit 13; DECEDENT [Stepdaughter] Trusts Created Under Trust Instrument Dated February 27, 1987 Trustee's Resignation, Joint Exhibit 14.

Creation of TEXAS CAPITAL CO. ("Texas Corp."), a Texas Corporation

31. On June 27, 2001, Articles of Incorporation for TEXAS CAPITAL CO. ("Texas Corp."), a Texas corporation, were filed with the Texas Secretary of State. DECEDENT was

named as the sole initial director of Texas Corp. The street address of the initial registered office of the corporation is DECEDENT'S ADDRESS, and the initial registered agent at such address is FOURTH WIFE. The Articles of Incorporation were signed by ATTORNEY, sole incorporator. TEXAS CAPITAL CO. [Texas Corp.] Articles of Incorporation dated June 27, 2001, Joint Exhibit 15.

Creation of FAMILY PARTNERSHIP, L.P. ("Texas L.P."), a Texas limited partnership

32. On June 27, 2001, a Certificate of Limited Partnership for FAMILY PARTNERSHIP, L.P. ("Texas L.P."), a Texas limited partnership, was filed with the Texas Secretary of State. The address of the principal office for Texas L.P. is DECEDENT'S ADDRESS, and the registered agent at such address is FOURTH WIFE. The Certificate of Limited Partnership was signed by ATTORNEY, Vice President of TEXAS CAPITAL CO., a Texas corporation. FAMILY PARTNERSHIP, L.P. [Texas L.P.] Certificate of Limited Partnership dated June 27, 2001, Joint Exhibit 16. At all times relevant hereto, Texas L.P. did not have a business situs in Oklahoma and did not conduct business in Oklahoma unless the business situs and the conduct of business by and operations in Oklahoma by Oklahoma L.L.C. are attributed to Texas L.P.

Creation of FAMILY RANCH, L.L.C. ("Oklahoma L.L.C."), an Oklahoma limited liability company

33. On June 27, 2001, Articles of Organization for FAMILY RANCH, L.L.C. ("Oklahoma L.L.C."), an Oklahoma limited liability company, were filed with the Oklahoma Secretary of State. The street address of its principal place of business in Oklahoma is RANCH ADDRESS, and the name and address of the registered agent in Oklahoma is LAW FIRM, LAW FIRM ADDRESS. The Articles of Organization were signed by ATTORNEY. FAMILY RANCH, L.L.C. [Oklahoma L.L.C.] Articles of Organization dated June 27, 2001, Joint Exhibit 17. At all times relevant hereto, Oklahoma L.L.C. conducted an established business in Oklahoma and had a business situs in Oklahoma.

Execution of Final Will

34. On June 29, 2001, at his home in Dallas, Texas, DECEDENT executed a will wherein he revoked all other wills and testamentary instruments theretofore made by him, which will was ultimately probated in Dallas County, Texas (the "Final Will"). Last Will and Testament of DECEDENT, Joint Exhibit 18. In the Final Will, DECEDENT appointed his wife, FOURTH WIFE, his daughter, DAUGHTER 1, and BANK as the personal representatives of his estate.

Creation of DECEDENT Revocable Trust

35. On June 29, 2001, at his home in Dallas, Texas, DECEDENT, as settlor, created the DECEDENT Revocable Trust (the "Revocable Trust"), with himself, a Texas resident, his wife

FOURTH WIFE, a Texas resident, and BANK, a national banking association, as co-trustees. DECEDENT Revocable Trust Agreement dated June 29, 2001, Joint Exhibit 19.

36. On June 29, 2001, pursuant to Exhibit A of the Revocable Trust agreement and a separate Assignment of Properties, all of settlor DECEDENT'S property of every kind and character and wherever located was transferred to the Revocable Trust. DECEDENT Assignment of Properties to DECEDENT Revocable Trust dated June 29, 2001 (the "Revocable Trust Assignment"), Joint Exhibit 20. The Revocable Trust Assignment required DECEDENT to execute and deliver to the Revocable Trust any other assignments, conveyances and instruments of transfer as the Revocable Trust might reasonably request to more fully effect the transfer, of properties from DECEDENT to the Revocable Trust, intended by the instrument.

37. The Revocable Trust agreement provided that, upon DECEDENT'S death, DECEDENT'S daughter, DAUGHTER 1, would become co-trustee of the Revocable Trust with DECEDENT'S wife, FOURTH WIFE, and BANK.

June 29, 2001Transactions

Revocable Trust Subscribes to Texas Corp. Stock and Obtains Texas L.P. Limited Partnership Interest

38. On June 29, 2001, at his home in Dallas, Texas, DECEDENT, being the sole director of Texas Corp., executed a TEXAS CAPITAL CO. [Texas Corp.] Consent to Action in Lieu of Organizational Meeting of Directors, June 29, 2001, ("Texas Corp. Consent to Action"), Joint Exhibit 21, whereby:

(i) the following officers of Texas Corp. were appointed: DECEDENT (a Texas resident), Chairman, CEO, and Treasurer; DAUGHTER 1, DECEDENT'S daughter (an Oklahoma resident), President and Assistant Treasurer; FOURTH WIFE, DECEDENT'S wife (a Texas resident), Vice President and Secretary; and ATTORNEY (an Oklahoma resident), Vice President;

(ii) the filing of Articles of Incorporation for Texas Corp. with the Texas Secretary of State on June 27, 2001 was ratified;

(iii) bylaws (Joint Exhibit 22) for the regulation of Texas Corp's affairs and the conduct of its business were adopted;

(iv) the issuance of 10,000 shares of Texas Corp. common stock to the Revocable Trust was authorized, in accordance with the Subscription Agreement dated June 29, 2001 attached as Exhibit A thereto by which the Revocable Trust subscribed to such shares at a purchase price of $350,000.00;

(v) the officers of Texas Corp were authorized to cause Texas Corp. to participate in the limited partnership agreement of Texas L.P. as the sole general partner of Texas L.P.; and

(vi) the President or Vice President of Texas Corp. was authorized to act on behalf of Texas Corp., in its capacity as general partner of Texas L.P., in connection with any business or activity of Texas L.P.

39. On June 29, 2001, the Revocable Trust contributed $350,000.00 to Texas Corp. in exchange for 10,000 shares of common stock of Texas Corp. being all of the outstanding shares of the capital stock of Texas Corp. Texas Corp. Consent to Action, Joint Exhibit 21. The price per share at which the Revocable Trust subscribed to all of the 10,000 shares of stock of Texas Corp. was $35.00 per share.

40. On June 29, 2001, for a purchase price of $350,000.00, Texas Corp. acquired a general partnership interest in Texas L.P. having a capital account of $350,000 and a sharing ratio estimated to be 0.47%. FAMILY PARTNERSHIP, L.P. (Texas) Limited Partnership Agreement ("Texas L.P. Partnership Agreement"), dated June 29. 2001, Joint Exhibit 23; Texas Corp. Consent to Action, Joint Exhibit 21. The Texas L.P. Partnership Agreement was executed at DECEDENT'S home in Dallas, Texas, by all of the signatory parties thereto, being DECEDENT, a Texas resident, on behalf of Texas Corp. as General Partner, and DECEDENT, FOURTH WIFE, a Texas resident, and BANK, a national banking association, by BANK REP., as Co-Trustees of the Revocable Trust, as Limited Partner.

41. On June 29, 2001, the Trustees of the Revocable Trust having contributed $350,000.00 to Texas Corp. in exchange for 10,000 shares of Texas Corp. stock, transferred to Texas L.P. all of the remaining property of the Revocable Trust except: (i) $14,100,000.00 of cash and marketable securities, (ii) the DECEDENT'S residence located in Dallas, Texas (the "Residence"), (iii) the "Big House" and related "Office" building located in COUNTY C, Oklahoma, (iv) the "Little House" located in COUNTY D, Oklahoma, (v) all contents located in the Residence, the Big House and related Office Building, and the Little House. DECEDENT Revocable Trust Assignment of Properties to FAMILY PARTNERSHIP, L.P. [Texas L.P.], dated June 29, 2001 (the "Texas L.P. Assignment"), Joint Exhibit 24. The Texas L.P. Assignment required the trustees to execute and deliver to Texas L.P. any other assignments, conveyances and instruments of transfer as Texas L.P. might reasonably request to more fully effect the transfer, of properties from the trustees to Texas L.P., intended by the instrument.

42. In exchange for the properties described in the Texas L.P. Assignment, the Revocable Trust received a capital account equal to the amount of cash and fair market value of properties contributed to Texas L.P. (net of liabilities) and a corresponding sharing ratio estimated to be 99.53%. Texas L.P. Partnership Agreement, Joint Exhibit 23. Per an appraisal of the assets of Texas L.P. obtained by DECEDENT'S advisors the net asset value of Texas L.P. was determined to be $82,859,221, which resulted in the Revocable Trust actually receiving a 99.57965% limited partner sharing ratio (the "Limited Partnership Interest"). Exhibit G-7 of the Federal Estate Tax Return, Joint Exhibit 61, below; Texas L.P. Partnership Agreement, Joint Exhibit 23.

43. On June 29, 2001, Texas L.P. acquired the entire membership interest in the Oklahoma L.L.C. FAMILY RANCH L.L.C. [Oklahoma L.L.C.] Operating Agreement, dated June 29, 2001, Joint Exhibit 25.

44. Texas L.P., as Member, and DAUGHTER 1, as Manager, entered into an Operating Agreement dated June 29, 2001 ("Oklahoma L.LC. Operating Agreement"), whereby DAUGHTER 1 was appointed as Manager of Oklahoma L.L.C. Oklahoma L.L.C. Operating Agreement, Joint Exhibit 25.

45. Following the foregoing transactions, Texas Corp. was the sole general partner of Texas L.P., and the Revocable Trust was the sole limited partner of Texas L.P. Texas L.P. Partnership Agreement, Joint Exhibit 23. Following the foregoing transactions, Texas L.P. was the sole member of Oklahoma L.L.C. Oklahoma L.L.C. Operating Agreement, Joint Exhibit 25.

46. On June 29, 2001, in accordance with and as required by the Revocable Trust Assignment (Joint Exhibit 20) and the Texas L.P. Assignment (Joint Exhibit 24), DECEDENT executed: (i) a warranty deed to transfer the Residence located in Dallas, Texas to the Revocable Trust (Warranty Deed dated June 29, 2001, recorded in Dallas County, Texas July 16, 2001, Joint Exhibit 26); (ii) a quitclaim deed to transfer the Big House and related Office located in COUNTY B, Oklahoma to the Revocable Trust (Quitclaim Deed dated June 29, 2001, recorded in COUNTY B, Oklahoma July 17, 2001, Joint Exhibit 27); and (iii) quitclaim deeds to transfer the Little House located in COUNTY C, Oklahoma to the Revocable Trust (Quitclaim Deed dated June 29, 2001, recorded in COUNTY C, Oklahoma July 17, 2001, Joint Exhibit 28; Quitclaim Deed dated July 27, 2001, recorded in COUNTY C, Oklahoma July 27, 2001, Joint Exhibit 29; Quitclaim Deed dated August 24, 2001, recorded in COUNTY C, Oklahoma August 28, 2001, Joint Exhibit 30).

47. On June 29, 2001, in accordance with and as required by: (i) the Revocable Trust Assignment (Joint Exhibit 20); (ii) the Texas L.P. Assignment (Joint Exhibit 24); and (iii) the Texas L.P. Partnership Agreement (Joint Exhibit 23), DECEDENT executed deeds to record the transfers of title of certain mineral and royalty interests located in Texas to Texas L.P. Conveyance of Mineral and Royalty Interests (COUNTY E, Texas) dated June 29, 2001 (recorded August 27, 2001, Joint Exhibit 31. Conveyance of Mineral and Royalty Interests (COUNTY F, Texas) dated June 29, 2001 (recorded September 17, 2001), Joint Exhibit 32. Conveyance of Mineral and Royalty Interests (COUNTY G, Texas) dated June 29, 2001 (recorded August 27, 2001), Joint Exhibit 33. Conveyance of Mineral and Royalty Interests (COUNTY H, Texas) dated June 29, 2001 (recorded August 27, 2001), Joint Exhibit 34. Conveyance of Mineral and Royalty Interests (COUNTY J, Texas) dated June 29, 2001 (recorded August 27, 2001), Joint Exhibit 35.

48. On June 29, 2001, in accordance with and as required by: (i) the Revocable Trust Assignment (Joint Exhibit 20); (ii) the Texas L.P. Assignment (Joint Exhibit 24); (iii) the Texas L.P. Partnership Agreement (Joint Exhibit 23), and (iv) the Oklahoma L.L.C. Operating Agreement (Joint Exhibit 25), DECEDENT executed deeds to record the transfers of title of the DECEDENT Ranch surface and mineral interests located in Oklahoma to Oklahoma L.L.C., as well as assignments of oil and gas leases. Quitclaim Deed, Bill of Sale and Assignment (COUNTY B, Oklahoma) dated June 29, 2001 (recorded August 8, 2001) and Quitclaim Deed, Bill of Sale and Assignment (COUNTY B, Oklahoma) dated June 29. 2001 (recorded September 17, 2001), Joint Exhibit 36. Quitclaim Deed, Bill of Sale and Assignment (COUNTY C, Oklahoma) dated June 29, 2001 (recorded July 19, 2001) and Quitclaim Deed,

Bill of Sale and Assignment (COUNTY C, Oklahoma) dated June 29, 2001 (recorded August 29, 2001), Joint Exhibit 37. Quitclaim Deed, Bill of Sale and Assignment (COUNTY A, Oklahoma) dated June 29, 2001 (recorded August 2, 2001) and Quitclaim Deed, Bill of Sale and Assignment (COUNTY A, Oklahoma) dated June 29, 2001 (recorded October 23, 2001), Joint Exhibit 38. Assignment of Oil and Gas Leases dated June 29, 2001 (recorded in COUNTY K, Oklahoma August 27, 2001), Joint Exhibit 39. Assignment of Oil and Gas Leases dated June 29, 2001 (recorded in COUNTY L, Oklahoma August 27, 2001), Joint Exhibit 40.

49. Pursuant to, and in compliance with, the Texas L.P. Assignment (Joint Exhibit 24), BANK was instructed to transfer all of the cash and marketable securities held by the Revocable Trust, except for $14,100,000, to Texas L.P. in exchange for the Limited Partnership Interest. Initially, BANK failed to properly transfer all of the cash and marketable securities in excess of $14,100,000 from the Revocable Trust to Texas L.P. On June 30, 2001, BANK transferred from the Revocable Trust to Texas L.P. cash and marketable securities of $52,019,428.37, leaving $7,028,647.62 of cash and marketable securities yet to be transferred. Upon the inception of Texas L.P., to account for BANK'S failure, a receivable in the amount of $7,028,647.62 of cash and marketable securities was recorded on the books of Texas L.P. and a liability for this amount was recorded on the books of the Revocable Trust. Trial Balance of Texas L.P., dated July 1, 2001, Joint Exhibit 41; Trial Balance of Revocable Trust, dated June 30, 2001, Joint Exhibit 42. From June 30, 2001 through August 30, 2001, BANK made various transfers between the accounts of the Revocable Trust and Texas L.P., and the amount owed by the Revocable Trust to Texas L.P. on DECEDENT'S date of death, August 30, 2001, was reduced to $5,511,264.41 ($5,469,648.47 plus accrued interest of $41,615.94). Schedule of Advances and Payments, Joint Exhibit 43; Schedule of Note Payable to FAMILY PARTNERSHIP, L.P., Joint Exhibit 44; Detail of Note Payable to FAMILY PARTNERSHIP, L.P. through 12/31/01, Joint Exhibit 45. The receivable was reported and taxed as an asset of Texas L.P. on the Federal Estate Tax Return. See page 16 of Schedule G-7 of the Federal Estate Tax Return, Joint Exhibit 61, below, listing "Demand note receivable and accrued interest from DECEDENT Revocable Trust" valued at $5,511,264.

50. To further document the Revocable Trust's liability to Texas L.P., the Revocable Trust executed a promissory note dated June 29, 2001, in the amount of $12,500,000, or so much as advanced from time to time from the Revocable Trust to Texas L.P. Promissory Note by the Revocable Trust to Texas L.P., dated effective June 29, 2001, Joint Exhibit 46. The promissory note was executed by BANK, FOURTH WIFE, and DAUGHTER 1, as co-trustees of the Revocable Trust. The Revocable Trust's liability to Texas L.P. was paid in full on June 18, 2002. Schedule of Advances and Payments, Joint Exhibit 43.

Creation of 2001 Irrevocable Trusts for DECEDENT Stepdaughters

51. On June 29, 2001, DECEDENT, as settlor, executed an irrevocable trust agreement that created two separate irrevocable trusts for his stepdaughters, STEPDAUGHTER 1 and STEPDAUGHTER 2. STEPDAUGHTER 2001 Family Trusts Irrevocable Trust Agreement dated June 29, 2001, Joint Exhibit 48.

52. Initially, BANK was the sole trustee of each of the two 2001 stepdaughter trusts. On July 10, 2001, per the terms of the STEPDAUGHTER 2001 Family Trusts Irrevocable Trust Agreement, each of the two stepdaughters became a co-trustee with BANK of her 2001 irrevocable trust.

Creation of 2001 Irrevocable Trusts for DECEDENT Children

53. On June 29, 2001, DECEDENT, as settler [sic], executed an irrevocable trust agreement that created four separate irrevocable trusts for four of his children, DAUGHTER 1, DAUGHTER 2, DAUGHTER 3, and SON, thereby creating the DAUGHTER 1 2001 Family Trust, the DAUGHTER 2 2001 Family Trust, the DAUGHTER 3 2001 Family Trust, and the SON 2001 Family Trust (collectively, the "2001 Children's Irrevocable Trusts"). DECEDENT specifically did not provide for his daughter, DAUGHTER 4, who had been adopted by SECOND HUSBAND. DECEDENT 2001 Family Trusts Irrevocable Trust Agreement dated June 29, 2001, Joint Exhibit 49. Each of the four 2001 irrevocable children's trusts were funded by a cash gift of $23,522.73 (collectively, $94,090.92) from DECEDENT (through the Revocable Trust), and an additional cash gift of $20,909.08 from DECEDENT (through the Revocable Trust) was made to the DAUGHTER 1 2001 Family Trust, for a total of $115,000.00. Exhibit A to Joint Exhibit 49.

54. BANK was instructed to transfer the cash between the applicable bank accounts to complete the cash gifts described above on June 29, 2001.

55. On July 10, 2001, BANK transferred $115,000 from the Revocable Trust's account to Texas L.P.'s account, but then realizing its mistake, later that day corrected it by transferring the $115,000 from Texas L.P.'s account to each respective trust account of the 2001 Children's Irrevocable Trusts.

56. Initially, BANK, a national banking association, was the sole trustee of each of the 2001 Children's Irrevocable Trusts. On July 10, 2001, per the terms of the irrevocable trust agreement of the 2001 Children's Irrevocable Trusts, each of the children became a co-trustee with BANK of his or her irrevocable trust.

June 30, 2001 Transaction-Revocable Trust's Sale of Texas Corp. stock to 2001 Children's Irrevocable Trusts

57. On June 30, 2001, the Revocable Trust, the sole shareholder of Texas Corp, elected the following members of the board of directors of Texas Corp: DECEDENT (a Texas resident), FOURTH WIFE (a Texas resident), DAUGHTER 1 (an Oklahoma resident), and BANK REP. (an Oklahoma resident, employed by BANK, a national banking association). TEXAS CAPITAL CO. [Texas Corp.] Record Action of Shareholders dated June 30, 2001, Joint Exhibit 51.

58. On June 30, 2001, the Revocable Trust, being the owner of all 10,000 outstanding shares of capital stock of Texas Corp, made the following sales of such stock: (i) 2,125 shares to the DAUGHTER 1 2001 Family Trust for a purchase price of $44,431.81, and (ii) 1,125 shares

each to the DAUGHTER 2 2001 Family Trust, the DAUGHTER 3 2001 Family Trust, and the SON 2001 Family Trust, respectively, for a purchase price of $23,522.73 from each of such trusts, for a total of $115,000.00. TEXAS CAPITAL CO. [Texas Corp.] Assignment of Stock, Joint Exhibit 52; TEXAS CAPITAL CO. Record of Ownership of Uncertificated Shares, Joint Exhibit 53.

59. The price per share at which the 2001 Children's Irrevocable Trusts acquired 5,500 of such shares from the Revocable Trust was $20.90 per share.

60. It was not until after DECEDENT'S death on August 30, 2001 that the $115,000 was transferred from each respective trust account of the 2001 Children's Irrevocable Trusts to the Revocable Trust's account in payment for the 5,500 shares of Texas Corp. stock that the 2001 Children's Irrevocable Trusts had purchased from the Revocable Trust, with $91,477.27 transferred on December 19, 2001 (See Revocable Trust Bank Statement for period July 5, 2001 through December 31, 2001, Joint Exhibit 55) and the remaining $23,522.73 transferred on March 1, 2002 (See Page 7 from Revocable Trust Bank Statement for period March 1, 2002 through March 29, 2002, Joint Exhibit 56). Until the transfers, the sale transaction was accounted for by recording a receivable of $115,000 on the books of the Revocable Trust as owing by the 2001 Children's Irrevocable Trusts. The receivable was reported and taxed as an asset of DECEDENT'S gross estate on the Federal Estate Tax Return. See Item 35 of Schedule G of the Federal Estate Tax Return, Joint Exhibit 61, below, listing "Receivable from DAUGHTER 1 2001 Family Trust, DAUGHTER 2 2001 Family Trust, DAUGHTER 3 2001 Family Trust, and SON 2001 Family Trust" valued at $115,000.

ATTORNEY Resignation from Texas Corp.

61. On July 3, 2001, ATTORNEY resigned as Vice President of Texas Corp. Letter dated July 3, 2001, Joint Exhibit 57.

Dallas County. Texas Probate

62. The Last Will and Testament of DECEDENT, Joint Exhibit 18, above, was admitted to probate in Dallas County, Texas (Probate Number: XX-XXX-XX). The only assets subject to the ongoing probate proceeding are 100 shares of POWER COMPANY common stock and two automobiles. All of DECEDENT'S other assets were held by the Revocable Trust on DECEDENT'S date of death.

Procedural History

Filing of 2001 Federal gift tax returns for cash gifts to 2001 Children's Irrevocable Trusts

63. On or about May 13, 2002, DECEDENT (through his personal representative EXECUTOR) and DECEDENT'S wife, FOURTH WIFE, each filed a 2001 federal gift tax return each reporting one-half (1/2) of the cash gifts to the 2001 Children's Irrevocable Trusts discussed in paragraph 53. Forms 709, United States Gift (and Generation Skipping Transfer)

Tax Return for 2001, Joint Exhibits 58 and 59. Each of these 2001 federal gift tax returns reflected the following gifts: (i) $44,408 cash to the DAUGHTER 1 2001 Family Trust, (ii) $23,551 cash to the SON 2001 Family Trust, (iii) $23,531 cash to the DAUGHTER 3 2001 Family Trust, and (iv) $23,510 cash to DAUGHTER 2 2001 Family Trust. The respective gifts as reflected on the 2001 gift tax returns were taken from a schedule reflecting same. Initial Schedule of Cash Gifts, Joint Exhibit 60. Certain errors in such schedule were discovered later, and a corrected schedule was prepared. The errors in the schedule resulted in an error in the allocation of the reported gifted value among certain gifts on the federal gift tax return but did not result in an error in the overall reported gifted value or in the total amount of gift tax paid.

Filing of Federal and Oklahoma estate tax returns and Texas inheritance tax return

64. On or about September 6, 2002, EXECUTOR, the executor of the estate of DECEDENT (the "Estate"), filed IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, Joint Exhibit 61, (the "Federal Estate Tax Return") reporting a federal gross estate of $71,286,743.50, and total federal estate tax of $20,649,552.81.

65. Included in the reported federal gross estate were 4,500 shares of Texas Corp. common stock valued at $91,600.00, and the Limited Partnership Interest valued at $47,089,000.00. The valuation of each of these interests was supported by an independent valuation included with the Federal Estate Tax Return prepared by VALUATION CO. of Houston, Texas. Exhibit G-7 of the Federal Estate Tax Return, Joint Exhibit 61.

66. In determining the value of the Estate's Limited Partnership Interest, VALUATION CO. first made a determination that the value of the total assets of Texas L.P. was $82,919,305, that Texas L.P. had liabilities valued at $60,084, and that the resulting overall net asset value of Texas L.P. was $82,859,221. VALUATION CO. then applied a 12.2% lack of control discount to determine the marketable, non-controlling value of Texas L.P. to be $72,750,396. To this amount, VALUATION CO. applied a 35.0% discount for lack of marketability, resulting in an aggregate fair market value of Texas L.P. of $47,287,757. By multiplying this amount by the Estate's limited partnership ownership interest of 99.57965%, VALUATION CO. [sic] determined the fair market value of the Estate's Limited Partnership Interest to be $47,089,000.

67. In determining the value of the Estate's 4,500 shares of Texas Corp., VALUATION CO. determined the value of Texas Corp.'s only asset, a 0.42035% general partner interest in Texas L.P., to be $348,000. The $348,000 value was determined by multiplying Texas L.P.'s net asset value of $82,859,221 (see paragraph 66, above) by 0.42035, Texas Corp.'s general partner interest percentage, and then rounding. VALUATION CO. then applied a 10.0% lack of control discount and a 35.0% lack of marketability discount for a resulting fair market value of the Estate's 4,500 shares of Texas Corp. of $91,600. See VALUATION CO. Valuation, page 85, Exhibit G-7 of the Federal Estate Tax Return, Joint Exhibit 61. This represents a value per share of $20.36 ($91,600 divided by 4,500 shares).

68. The Estate retained APPRAISAL CO. to prepare date of death appraisals of fair market values of the FAMILY RANCH real estate and improvements located in COUNTY C,

COUNTY B and COUNTY A, State of Oklahoma. Because the COUNTY C properties (also known as the PROPERTY 1 properties) are distant from the COUNTY B and COUNTY A properties (also known as the PROPERTY 2 properties), APPRAISAL CO. prepared two separate appraisals. APPRAISAL CO. Appraisal of COUNTY B and COUNTY A Property dated December 15, 2001, Exhibit G-8 of the Federal Estate Tax Return, Joint Exhibit 61. APPRAISAL CO. Appraisal of COUNTY C Property dated December 15, 2001, Exhibit G-9 of the Federal Estate Tax Return, Joint Exhibit 61.

69. APPRAISAL CO. determined that the combined fair market value of the FAMILY RANCH real estate and improvements, including the Big House, the Little House and the Office (which were not contributed to Texas L.P.) as of August 30, 2001 was $19,641,227.00.

70. The value of the COUNTY B AND COUNTY A (PROPERTY 2) properties real estate was determined to be $8,293,750.00, and the value of the related improvements was determined to be $923,153.00. The value of the improvements included the valuation of the Big House of $251,775.00 and a valuation of the Office of $165,240.00.

71. The value of the COUNTY C (PROPERTY 1) properties real estate was determined to be $9,200,000.00, and the value of the related improvements was determined to be $1,224,324.00. The value of the improvements included the valuation of the Little House of $188,670.00.

72. The Estate retained ASSET CO. to inventory and appraise the fair market value of the contents of the Big House and Office located on the COUNTY B (PROPERTY 2) properties and the contents of the Little House located on the COUNTY C (PROPERTY 1) properties. ASSET CO. appraised the fair market value of the contents of the Big House and Office at $69,175.00. ASSET CO. appraised the fair market value of the contents of the Little House at $36,895.00. ASSET CO. Inventory and Appraisal of the Contents of the PROPERTY 2 AND PROPERTY 1 Properties as of August 30, 2001, Exhibit G-10 of the Federal Estate Tax Return, Joint Exhibit 61.

73. By letter to the OTC dated May 30, 2002, the Estate tendered payment of $1,220,784 "for estate taxes due the State of Oklahoma" and requested an extension of time for filing the Oklahoma estate tax return. Letter from ATTORNEY to OTC dated May 30, 2002, Joint Exhibit 62. On June 20, 2002, the OTC returned the letter stamped with an extension approval to November 30, 2002 (Joint Exhibit 62).

74. On September 5, 2002, EXECUTOR, the executor of the Estate, filed Oklahoma Tax Commission Form 454-R-96, Estate Tax Return (the "Oklahoma Estate Tax Return"), Joint Exhibit 63, reporting an Oklahoma gross estate of $11,553,183.15, and total Oklahoma estate tax of $1,233,242.00. With the return, the Estate tendered payment of additional tax of $12,458.00 and interest of $467.16.

75. The Oklahoma Estate Tax Return, at page 9, did not disclose the filing of federal gift tax returns within the last three years, and no copies of gift tax returns were attached.

76. Included in the reported Oklahoma gross estate were: the Big House, the Office, the Little House and the contents of each, all of which totaled $711,755.00 in fair market value (see paragraphs 70 through 72, above), all of which were owned outright by the Revocable Trust. The balance of reported Oklahoma gross estate, $10,841,428.15, was comprised of a portion of the Limited Partnership Interest.

77. The value of a portion of the Limited Partnership Interest included in the Oklahoma Estate Tax Return was calculated as follows:

Value of FAMILY RANCH from appraisal:	$21,987,572
Oklahoma Portion of Mineral Interests:	198,362
Total Net Asset Value of Oklahoma Portion of Partnership:	$22,185,934
Less: 51% Discount for Minority Interest and Marketability (rounded):	$11,298.742
Value of Oklahoma Portion of Limited Partnership:	$10,877,192
Percentage Interest in Limited Partnership Interest:	99.57965%
Total Value of Oklahoma Portion of Limited Partnership Interest:	$10,841,428

78. The Estate asserts that the inclusion of any portion of the Limited Partnership Interest in the Estate's Oklahoma gross estate, was in error.

79. By letter to the Texas Comptroller dated May 30, 2002, the Estate tendered payment of $6,384,589.71 "for estate taxes due the State of Texas" and requested an extension of time for filing the Texas inheritance tax return. Letter from ATTORNEY to Texas Comptroller dated May 30, 2002, Joint Exhibit 64. By letter dated July 5, 2002, the Texas Comptroller acknowledged the payment and granted an extension of time to file the Texas Inheritance Tax Return to November 30, 2002. Letter from Texas Comptroller to ATTORNEY dated July 5, 2002, Joint Exhibit 65.

80. On or about September 5, 2002, EXECUTOR, the executor of the Estate, filed Comptroller of Public Accounts State of Texas Form 17-106, Inheritance Tax Return — Federal Estate Tax Credit (the "Texas Inheritance Tax Return"), Joint Exhibit 66, reporting a Texas taxable estate of $59,733,560.35, and total Texas inheritance tax of $6,376,261.31, and requesting a refund of Texas inheritance tax previously paid in the amount of $8,328.40.

81. Included in the Texas taxable estate was the balance of the fair market value of the Limited Partnership Interest not included in the Estate's Oklahoma gross estate, $36,247,571.85, as well as all other property owned by the Revocable Trust or by DECEDENT outright at his death located in Texas and valued at $23,485,988.50 that was not included in the Estate's Oklahoma gross estate.

IRS Examination of the Federal Return

82. In July 2003, the Estate was advised by the Internal Revenue Service that it had begun an examination of the Estate's Federal Estate Tax Return (Joint Exhibit 60), and requested that numerous records be provided to the Internal Revenue Service. Internal Revenue Service letter dated July 11, 2003 to ATTORNEY, Joint Exhibit 67.

83. On February 6, 2004, ATTORNEY and ATTORNEY 2, attorneys for the Estate, sent a memorandum (with attachments) to IRS ATTORNEY, IRS attorney, responding to issues raised in a January 8, 2004 meeting with IRS ATTORNEY. Memorandum from ATTORNEY and ATTORNEY 2 to IRS ATTORNEY dated February 6, 2004, (with attachments), Joint Exhibit 68.

84. In January of 2004, LAW PARTNER, a retired partner of PARTNER LAW FIRM, executed an affidavit for submission to IRS ATTORNEY summarizing the history of PARTNER FIRM'S relationship with DECEDENT. Affidavit of LAW PARTNER, Joint Exhibit 69.

85. On May 7, 2004, the IRS issued its examination report for the Estate, showing a recomputed federal gross estate, based on IRS adjustments, of $75,574,601.50, an increase of $4,287,858.00 over the amount reported by the Estate, and a recomputed total federal estate tax, based on IRS adjustments, of $22,175,159.94, an increase of $1,525,607.13 over the amount reported by the Estate. IRS Letter dated May 7, 2004, with examination report attached (the "IRS Examination Report"), Joint Exhibit 70.

86. On May 18, 2004, the IRS issued its Federal Estate and Generation-Skipping Tax Closing Letter, reflecting the adjustments proposed in the IRS Examination Report. IRS Federal Estate and Generation-Skipping Tax Closing Letter, dated May 18, 2004, Joint Exhibit 71.

87. The IRS determined that the value of the Estate's 4,500 shares of Texas Corp. was $91,600, which was the amount reported by the Estate on the Federal Estate Tax Return.

88. The IRS determined that the values of all of the Estate's other assets, except for the Limited Partnership Interest, were the amounts reported by the Estate on the Federal Estate Tax Return.

89. The only asset of the Estate that was revalued by the IRS from the amount reported by the Estate on the Federal Estate Tax Return was the Limited Partnership Interest. The IRS increased the value of the Limited Partnership Interest from $47,089,000.00 to $51,156,776.00, an increase of $4,067,776.

90. The IRS determined the undiscounted value of Texas L.P.'s current assets, including oil and gas royalties, less liabilities, ("Current Assets") to be $60,871,648. The IRS then applied a lack of control discount of 6.51% and a lack of marketability discount of 27.81% for a fair market value of the portion of the Limited Partnership Interest attributable to the Current Assets of $40,909,847.

91. The IRS determined the undiscounted value of Texas L. P.'s membership interest in Oklahoma L.L.C. to be $21,987,572, which was the value determined by the VALUATION CO. Valuation and reported by the Estate (the "Oklahoma L.L.C. Assets"). The IRS then applied a lack of control discount of 28.00% and a lack of marketability discount of 35.00% for a fair market value of the portion of the Limited Partnership Interest attributable to Texas L.P.'s interest in Oklahoma L.L.C. of $10,246,929.

92. The Oklahoma L.L.C. Assets, totaling $21,987,572 in value, were comprised of: (i) cash, $209,755; (ii) real estate in COUNTY B AND COUNTY A, Oklahoma, $8,799,888 (supported by an independent real estate appraisal by APPRAISAL CO., excluding the values of the Big House and Office and their contents, which were owned by the Revocable Trust); (iii) real estate in COUNTY C, Oklahoma, $10,235,654 (supported by an independent real estate appraisal by APPRAISAL CO., excluding the values of the Little House and its contents, which were owned by the Revocable Trust); (iv) cattle, $1,856,100 (supported by an independent livestock appraisal by LIVESTOCK APPRAISER); (v) horses, $265,650 (supported by an independent livestock appraisal by LIVESTOCK APPRAISER); and (v) machinery and equipment, $620,525 (supported by an independent property appraisal by PROPERTY CO.).

93. The IRS concluded that Internal Revenue Code Section 2036 did not apply.

94. The IRS concluded that Internal Revenue Code Section 2037 did not apply.

95. The IRS concluded that Internal Revenue Code Section 2038 did not apply.

Texas Assessment and Estate's Oklahoma Refund Request

96. On September 26, 2002, the Estate Tax Section of the Oklahoma Tax Commission issued its Notice of Assessment accepting $1,233,242.00 as being the tax assessed and paid and stating that the Estate Tax Section's audit revealed no additional taxes to be assessed at this time, Joint Exhibit 72, and acknowledging receipt of payment of same in full. Oklahoma Tax Commission Order Releasing Taxable Estate, dated September 26, 2002, Joint Exhibit 73.

97. On November 25, 2002, in response to a request by the Texas Comptroller, the Estate submitted information to the Texas Comptroller, including the Oklahoma Estate Tax Return (Joint Exhibit 63). Letter from EXECUTOR to Texas Comptroller dated November 25, 2002, Joint Exhibit 74.

98. On January 9, 2003, the State of Texas Comptroller of Public Accounts ("Texas Comptroller") issued a Texas Notice of Tax/Fee Due, Joint Exhibit 75, increasing the Texas taxable estate by $10,841,428.00 and increasing the Texas inheritance tax due by $1,148,940.32, along with a penalty of $114,894.03 and interest through January 9, 2003 of $40,401.78. Such increase in the Texas taxable estate was based on including therein the full fair market value of the Limited Partnership Interest, rather than a portion of the fair market value of the Limited Partnership Interest as reported by the Estate. See also Texas Comptroller of Public Accounts Position Letter submitted May 27, 2004, Joint Exhibit 76.

99. By letter dated January 30, 2003, Joint Exhibit 77, the Estate forwarded to the OTC a draft copy of a possible response by the Estate to the Texas Comptroller. The draft copy of the possible response argued in support of the Estate's allocation of assets between the Texas and Oklahoma estate tax returns and set forth what the Estate believed was "Oklahoma's best argument for taxing that portion of the Texas limited partnership interest attributable to Oklahoma minerals and an Oklahoma ranching business." The Estate also requested a letter ruling from the OTC regarding its position on the issue discussed in the draft copy of the possible response to the Texas Comptroller.

100. By electronic mail message (e-mail) dated February 6, 2003, the Estate requested the status of the letter ruling. E-mail dated February 6, 2003, Joint Exhibit 78.

101. On February 7, 2003, the Estate petitioned the Texas Comptroller for a hearing for redetermination of its Notice of Tax/Fee Due dated January 9, 2003 (Joint Exhibit 75). Letter from EXECUTOR to Texas Comptroller dated February 7, 2003, Joint Exhibit 79.

102. By electronic mail message (e-mail) dated March 6, 2003, the Estate requested the status of the letter ruling. E-mail dated March 6, 2003, Joint Exhibit 80.

103. By attachment to an electronic mail message (e-mail) dated May 21, 2003, the Estate forwarded to the OTC the "final letter sent to the Texas Comptroller regarding the taxation of the Oklahoma minerals and Oklahoma Ranch property portion of the Decedent's limited partnership interest." E-mail dated May 21, 2003, 1:30 pm, Joint Exhibit 81. The e-mail stated that the final version of the letter "contains additional arguments and citations that are not contained in the draft letter [the OTC] received in January."

104. By attachment to an e-mail dated May 21, 2003, the Estate forwarded to the OTC "a brief statement of the issue as it applies to Oklahoma and a conclusion containing language" the Estate hoped could be included in the OTC's letter ruling. E-mail dated May 21, 2003, 5:39 pm, Joint Exhibit 82.

105. By electronic mail message (e-mail) dated May 28, 2003, the Estate requested the status of the letter ruling. E-mail dated May 28, 2003, Joint Exhibit 83.

106. On June 19, 2003, the Legal Division of the OTC issued Letter Ruling LR-03-004. Letter Ruling LR-03-004 concluded that: "based on the facts presented, intangible personal property with a business situs in Oklahoma, including an interest in a partnership conducting business in or having a majority of its assets located in Oklahoma, is subject to Oklahoma estate tax." Letter Ruling LR-03-004 dated June 19, 2003 Joint Exhibit 84.

107. On September 24, 2003, the Estate timely filed a Request for Refund of Estate Tax with the Estate Tax Section of the Oklahoma Tax Commission in the amount of $1,157,268.72, the portion of the Oklahoma estate tax reported and paid by the Estate attributable to the inclusion of a portion of the fair market value of the Limited Partnership Interest. The Estate asserted that such tax had been mistakenly paid because the Limited Partnership Interest did not

meet the requirements for inclusion under 68 Okla. Stat. §807(A)(7) and because application of such statute here would be unconstitutional. Letter dated September 24, 2003, Joint Exhibit 85.

108. On December 31, 2003, the Audit Division of the Estate Tax Section of the Oklahoma Tax Commission denied the Estate's Request for Refund of Estate Tax, Letter dated December 31, 2003, Joint Exhibit 86 and on January 30, 2004, the Estate timely protested the denial of its request for refund and requested a hearing thereon. Letter dated January 30, 2004, Joint Exhibit 87.

OTC Initial Assessment and Protest

109. On September 1, 2004, the Audit Division of the Estate Tax Section of the Oklahoma Tax Commission issued a Notice, Joint Exhibit 88, assessing the Estate with an estate tax, plus accrued interest, in the amount of $10,124,138.00, crediting the Estate with $1,220,784.00 theretofore paid for a total amount owing if paid by September 25, 2004, of $8,903,354.00. In such Notice, the Estate Tax Section asserted that: (i) the formation of Texas LP, Texas Corp., and Oklahoma L.L.C. are deemed to be transfers in contemplation of death and an attempt to evade Oklahoma Estate Tax, and (ii) the corpus of the Revocable Trust was held in Oklahoma by an Oklahoma trustee and as such the corpus of the Revocable Trust is deemed to be Oklahoma property.

110. On October 26, 2004, the Estate, pursuant to an extension of time duly granted, timely filed its protest to such $10,124,138.00 assessment. Letter dated October 26, 2004, Re: Protest of Additional Estate Tax, Joint Exhibit 89.

Texas Appeal

111. On May 5, 2005, the Texas Comptroller of Public Accounts approved and adopted the Administrative Law Judge's decision upholding the Comptroller's January 9, 2003 inheritance tax assessment, with the following amendments: (i) the taxable value of the estate property that is at issue should be reduced from $10,841,428 to $10,380,242; (ii) interest should be waived for a six-month period from July 1, 2003 to December 31, 2003; and (iii) penalty should be waived. Total Texas inheritance tax was determined to be $8,157,461.05. Comptroller's Decision dated May 5, 2005, Joint Exhibit 90.

112. On June 16, 2005, the Estate, acting by and through the Revocable Trust, remitted the Texas inheritance taxes, including penalty and interest, in the amount of $1,293,469.96, as found by the Texas Comptroller of Public Accounts to be owing, together with the Estate's Protest Letter Pursuant to Texas Tax Code Section 112.051. Letter dated June 16, 2005, with enclosures, Joint Exhibit 91.

113. On September 14, 2005, the Estate filed suit, against the Comptroller of Public Accounts of the State of Texas and the Attorney General of the State of Texas, Cause No. GN-503318, in the District Court of COUNTY M, Texas, seeking a refund of tax, penalty and interest paid to the State of Texas. Plaintiff Estate of DECEDENT'S Original Petition, Joint Exhibit 92. Citation to CONTROLLER, Comptroller of Public Accounts of the State of Texas.

Joint Exhibit 93. Citation to ATTORNEY GENERAL, Attorney General of the State of Texas, Joint Exhibit 94. Defendants' Plea in Abatement, Original Answer, Special Exception & Affirmative Defenses, Joint Exhibit 95. Notice of Hearing, Joint Exhibit 96. Agreed Motion to Substitute Plaintiff, Joint Exhibit 97. Plaintiff's Responses to Defendants' Request for Initial Disclosure, Joint Exhibit 98.

114. The Estate's appeal suit in Texas remains pending and unresolved.

OTC Revised Assessment and Protest

115. On May 22, 2006, the Audit Division of the Estate Tax Section of the Oklahoma Tax Commission issued an Amended Order Assessing Tax, Joint Exhibit 99, assessing the Estate with an estate tax, plus accrued interest, in the amount of $2,523,717.00, crediting the Estate with $1,233,709.16 theretofore paid, for a total amount owing if paid by June 10, 2006, of $1,290,007.84. In such Amended Order Assessing Tax, the Estate Tax Section asserted that certain real estate should be "brought back into the estate as Oklahoma property under O.S. 68s [sic] 807 A.2."

116. On June 21, 2006, the Estate timely filed its protest to such Amended Order Assessing Tax. Letter dated June 21, 2006, Re: Protest of Oklahoma Tax Commission Amended Assessment, dated May 22, 2006, Joint Exhibit 100.

ADDITIONAL FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, and the Briefs, the undersigned finds:

HISTORY OF FAMILY RANCH

117. The FAMILY RANCH is HISTORICALLY SIGNIFICANT in Oklahoma. The FAMILY RANCH began in 1868 when ORIGINAL OWNER filed a homestead claim in the NATIVE AMERICAN Nation of Indian Territory near current-day SMALL TOWN, Oklahoma. The ORIGINAL brand, "XX", was the first brand registered in Indian Territory (the brand has since been changed to "ZZ"). ORIGINAL OWNER was involved in a number of area ranching organizations. The HORSE ASSOCIATION held its meetings at the ORIGINAL OWNER schoolhouse. ORIGINAL OWNER was a member of the LIVESTOCK ASSOCIATION and was appointed to the HORSE ASSOCIATION 2, an Indian Territory version of the Texas Rangers. When ORIGINAL OWNER died in 1924, the ranch was turned over to his son, Judge OWNER'S SON. The ranch was then turned over to his daughter, OWNER'S DAUGHTER. In 1931, OWNER'S DAUGHTER married DECEDENT'S FATHER and the ORIGINAL RANCH became the FAMILY RANCH. DECEDENT took over the ranch operations. Since that time, the ranch has expanded to include approximately 40,000 acres of native grass, wheat, and rye grass pasture in three counties: COUNTY B AND COUNTY A Counties in southeastern Oklahoma and COUNTY C County in southwestern Oklahoma.[9]

[9] Joint Exhibit 61, G-7.

118. The FAMILY RANCH acreage expanded considerably in the 17 years prior to the valuation date (August 30, 2001). During that time purchases were made of approximately 28,000 acres of land through eleven transactions, two of which involved over 10,000 acres each, at a total cost of approximately $8.6 million. The two largest purchases of land occurred in 1993 and 1995 when DECEDENT acquired 12,000 acres and 11,000 acres, respectively, both in ANY TOWN, Oklahoma, at a combined cost of approximately $7 million. In the five years prior to August 30, 2001, DECEDENT acquired approximately 1,500 acres at a cost of over $630,000 in four separate transactions. As of the valuation date, management expected to continue to purchase additional acreage as land became available for purchase. As of the valuation date the COUNTY B AND COUNTY A Division near SMALL TOWN, Oklahoma, which includes the original homestead, contained approximately 16,000 acres of land. The COUNTY C Division in ANY TOWN, Oklahoma, which began with the acquisition of 11,986 acres of land in 1993, contained approximately 23,000 acres as of the valuation date. A portion of the historic Chisholm Trail, including LANDMARK, runs through the ANY TOWN property. LANDMARK, a landmark for drovers moving cattle along the Chisholm Trail, is located on the north side of the FAMILY RANCH'S ANY TOWN property.[10]

119. The FAMILY RANCH was the 1995 recipient of the Best Remuda[11] Award, given by the NATIONAL HORSE ORGANIZATION and the NATIONAL CATTLE GROUP to outstanding ranch remudas of American Quarter Horses. As of the valuation date, the DECEDENT horse program numbered 88 head. The foundation of the remudas goes back to the 1940's when DECEDENT'S FATHER bought mares and a horse call HORSE 1 from HORSE FARM in CITY, Texas. In 1963, DECEDENT purchased HORSE 2. Over 22 years HORSE 2 sired 243 "NAME X" Horses. Three became NATIONAL HORSE ORGANIZATION Champions. Of 51 to enter the show arena, 36 earned Registers of Merit. The FAMILY RANCH bred the Superhorse of the 1995 NATIONAL HORSE ORGANIZATION World Championship Show.[12]

120. The APPRAISAL CO. determined the aggregate fair market value of the FAMILY RANCH, as of the date of DECEDENT'S death, to be $21,987,572.00 (26.5% of the Estate's total assets). The FAMILY RANCH consisted of approximately 40,000 acres of ranch lands, and the related cattle (3,730), horses (117), farming operations, including machinery and equipment ($625,525.00)[13] and a small amount of cash ($209,755.00).[14]

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[10] Joint Exhibit 61, G-7.

[11] "**remuda**" The saddle horses collectively from which are chosen those to be used for the day; a relay of remounts. Webster's New International Dictionary 2108 (2nd ed. 1957).

[12] Joint Exhibit 61, G-7.

[13] According to Joint Exhibit 61, G-7, Page 6, the value of the machinery and equipment is $625,525.00, not $620,525.00 as stated in Stipulation, ¶ 92.

[14] Joint Exhibit 61, G-7.

121. ATTORNEY suggested the Estate Plan during the initial meeting with DECEDENT sometime in May or June of 2001.[15]

122. DECEDENT'S top three (3) priorities[16] during the initial meeting with ATTORNEY were:

(1) the preservation of the FAMILY RANCH;[17]
(2) that the liquidity of the Estate be professional managed for the benefit of his children; and
(3) that his daughter DAUGHTER 1 be placed in charge of FAMILY RANCH and its management.

123. The Estate Plan provides for the preservation of the FAMILY RANCH, BANK in charge of professionally managing the liquid assets of the Estate, protecting DECEDENT'S children from the uncertainty of failed marriages, by isolating and identifying separate property from jointly acquired property or community property, and protecting the 2001 Children's Irrevocable Trusts from the claims of creditors.[18]

124. The claim filed by the Estate on September 24, 2003, seeks the refund of estate tax paid in the amount of $1,157,268.72, that being the portion of the Oklahoma Estate Tax attributable to the inclusion of the Texas L.P. interest in Oklahoma L.L.C.[19] The claim filed by the Estate does not include a request for a refund of estate taxes paid on the Big House, Little House, Office, and Household properties owned at DECEDENT'S death by the Revocable Trust.[20]

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.[21]

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[15] Tr. at 26-29. For purposes of the record the Division had a continuing objection on the basis of hearsay to ATTORNEY'S testimony regarding conversations with DECEDENT. The continuing objection was noted for the record and overruled.

"Hearsay evidence is not grounds for reversible error in administrative hearings where order is supported by other competent evidence." *Mobilfone Service, Inc. v. Corporation Commission*, 1978 OK 98, 580 P.2d 995.

[16] Tr. at 32-33.

[17] Joint Exhibit 69. The Affidavit of AFFIANT.

[18] Tr. at 34-38.

[19] Stipulation, ¶ 107. Joint Exhibit 85.

[20] *See* Note 19. *See also* Stipulation, ¶ 108 and Joint Exhibits 86-87.

[21] OKLA. STAT. tit. 68, § 221(D) (West 2001).

2. A tax is levied upon the transfer[22] of the net estate of every decedent, whether in trust or otherwise, to persons, associations, corporations, or bodies politic, of property, real, personal, or mixed, whether tangible or intangible, or any interest therein or income therefrom, by will or the intestate laws of this state, by any order setting apart property and/or granting family allowances pursuant to the probate code, by deed, grant, bargain, sale, or gift made in contemplation of death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.[23]

3. The resolution of this matter is determined by applying the provisions of Section 807(A)(2) of Title 68[24] and Section 807(A)(7) of Title 68,[25] which states as follows, to-wit:

> A. The value of the gross estate, used as a basis for a determination of the value of the net estate, shall be determined by including:
>
> …
>
> 2. Except as provided in this paragraph, the value of any real or personal property, including the homestead passing by deed, grant, bargain, sale or gift made in contemplation of death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after the death of the decedent. Any transfer made by the decedent of a material part of the estate of the decedent within three (3) years prior to death, *without an equivalent in monetary consideration, shall, unless shown to the contrary, be deemed to have been in contemplation of death*, and such transfers shall be included at their net value at the date of decedent's death. This paragraph shall not apply to any gift to a donee, excepting gifts with respect to a life insurance policy, made during the calendar year if the decedent was not required to file any federal gift tax return for such year with respect to gifts to such donee. [Emphasis added.]
>
> …
>
> 7. To the extent of the interest of any decedent, who at the time of death was a nonresident of the State of Oklahoma, in any intangible personal property which is used in connection with any established business, having a business situs in this state including, the interest of such nonresident in a partnership the business of which is conducted in the state or the majority of

[22] OKLA. STAT. tit. 68, § 802 (West 2001):

> The word "transfer," as used in this article, shall be taken to include, but shall not be limited to, the passing of property, or any vested or contingent interest therein, in possession or enjoyment, present or future, by distribution, by statute, descent, devise, bequest, grant, deed, bargain, sale, or gift.

[23] OKLA. STAT. tit. 68, § 802 (West 2001).

[24] OKLA. STAT. tit. 68, § 807(A)(2) (West 2001).

[25] OKLA. STAT. tit. 68, § 807(A)(7) (West 2001).

> assets of which are located in this state. None of the intangible personal property subject to tax under this paragraph shall be exempt under the provisions for reciprocity in paragraph 1 of subsection A of this section. No property exempted by paragraph 6 of this subsection shall be subject to tax by reason of this paragraph.
>
> ...

4. Section 807(A)(2) "represents a legislative scheme to prevent inheritance tax evasion by imposing certain criteria on inter vivos[26] transfers."[27] While it is generally the rule that the burden is on the taxpayer to show in what respects the proposed action of the Tax Commission is incorrect, this rule does not apply when there is a statute providing otherwise. Section 807(A)(2) is such a statute.[28] There is a presumption that the transfers were made in contemplation of death, shifting the burden of proof to the estate. The burden shifts *only* after certain elements are established by the Division.

5. *Before the presumption arises* that the transfers were made in contemplation of death, the Division must prove the following elements:

(a) the transfers occurred;
(b) the transfers were a material part of the decedent's property;
(c) the transfers were not made for an equivalent in monetary consideration; and
(d) the transfers were made within three (3) years of death.

If these elements are proven, the presumption arises that the transfers were made in contemplation of death. The burden then shifts to the estate to establish that the transfers were not made in contemplation of death.[29]

6. In May 2001, DECEDENT was medically diagnosed with terminal cancer.[30] DECEDENT died in his Dallas, Texas, residence on August 30, 2001, at the age of 68.[31] Prior to June 2001, DECEDENT'S assets were held in his name individually.[32]

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[26] ***"inter vivos"*** (**in**-t<<schwa>>r **vI**-vohs *or* **vee**-vohs), *adj*. [Latin "between the living"] Of or relating to property conveyed not by will or in contemplation of an imminent death, but during the conveyor's lifetime. -- ***inter vivos,*** *adv*. BLACK'S LAW DICTIONARY (8th ed. 2004).

[27] *Wilson v. State ex rel. Oklahoma Tax Commission*, 1979 OK 62, ¶¶ 1-3, 594 P. 2d 1210.

[28] OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999). *See* OTC (Precedential) Order No. 1994-06-21-003 (June 21, 1994), 1994 WL 848093 (Okl. Tax Com.).

[29] OTC Order No. 2005-03-01-02 (March 1, 2005), 2005 WL 1827929 (Okl. Tax Com.).

[30] Stipulation, ¶ 15.

[31] Stipulation, ¶ 16.

[32] *See* Stipulations ¶ 36, ¶ 41, ¶ 46, and ¶ 47. *See also* Joint Exhibits 20, 24, 26-40, 63 and 99.

A. THE TRANSFERS OF FAMILY RANCH.

7. Section 807(A)(2) does not define what constitutes a transfer "without an equivalent in monetary consideration," but the phrase is similar to the language "full and adequate consideration" contained in I.R.C. § 2036.

8. The Internal Revenue Service ("IRS") concluded I.R.C. Sections 2036 (Transfers with Life Estates),[33] 2037 (Transfers Taking Effect at Death),[34] and 2038 (Revocable Transfers)[35] did not apply[36] to the Estate Plan approved by DECEDENT; but it appears that the parties agree, at least in theory, that federal case law may be instructive in determining whether the transfers of FAMILY RANCH were made "without an equivalent in monetary consideration" for Oklahoma Estate Tax purposes.

9. The Division has taken the position that the transfers made by DECEDENT "presents nothing more than recycling of assets,[37] wrapped up in a dizzying array of transactions and transfers, which served no purpose except to avoid taxes by dissipating the value of the assets by transfer to a family partnership[38] and pursuing further transfers to eliminate the appearance of control and obtain a further discount for lack of control."[39] The Estate takes exception to the Division's characterization of the Estate Plan, but from a reading of the Division's briefs filed herein, even the Division appears to concede, albeit grudgingly, that an estate plan can meet the requirements of Section 807(A)(2).

10. In the *Kimbell* case, the United States Court of Appeals, Fifth Circuit,[40] held:

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[33] 26 U.S.C.A. § 2036.

[34] 26 U.S.C.A. § 2037.

[35] 26 U.S.C.A. § 2038.

[36] Stipulations, ¶¶ 93-95.

[37] *See Estate of Jones v. C.I.R.*, 116 T.C. No. 11, 116 T.C. 121 (2001).

[38] 6A VRN-OKFORM § 1.2 (c)(6), *at* http://www.westlaw.com(last visited September 12, 2006):

> **Family Limited Partnerships** (and Family Limited Liability Companies) provide a mechanism to join asset protection with estate planning. Because of the legal limitations imposed on transferability of an interest in such an entity, a creditor may be dissuaded from attempting to take such a business interest in satisfaction of a debt simply because it is too much trouble. An additional benefit of such restrictions is that they will reduce the value of the interest for gift or estate tax purposes, thereby giving considerable leverage to gifts of interests to family members.

[39] *See* Division's Position Memorandum filed August 10, 2006. *See also Harper v. C.I.R.*, T.C. Memo. 2002-121 (2002).

[40] *Kimbell v. U.S.*, 371 F.3d 257 (5th Cir. 2004).

> Fact that taxpayer's inter vivos transfer of property is intrafamily does not impose additional requirement not set forth in recapture statute to establish that it is bona fide sale, and thus not includable in taxpayer's estate; transaction that is bona fide sale between strangers is also bona fide between members of same family.[41]
>
> Although inter vivos transaction motivated solely by tax planning with no business or corporate purpose is nothing more than contrivance without substance that is rightly ignored for purposes of estate tax computation, presence of tax planning motives does not prevent sale from being "bona fide," and thus not subject to recapture rule, if transaction is otherwise real, actual or genuine.[42]

11. The transfers of the FAMILY RANCH consist of the following, to-wit:

    a. DECEDENT transfers all FAMILY RANCH assets totaling $21,987,572.00, with the exceptions noted herein, to Oklahoma L.L.C. The Texas L.P., the sole member of the Oklahoma L.L.C., executed the Operating Agreement with DAUGHTER 1 as the Manager of Oklahoma L.L.C. The Operating Agreement was executed on behalf of Texas L.P., by DECEDENT, as Chairman and CEO of Texas Corp, (the General Partner of Texas L.P.) and DAUGHTER 1 in her individual capacity.
    b. DECEDENT transfers remaining assets to the Revocable Trust, with the exceptions noted herein. The Revocable Trust, as the Limited Partner of Texas L.P. transfers all its assets in the amount of $74,652,334.00 to Texas L.P., in return for a 99.57965% interest in the Texas, L.P. The Revocable Trust purchases a 100% interest (10,000 Shares) in Texas Corp. for $350,000.00. The Texas Corp., as the General Partner of the Texas L.P, has a 0.42035% interest in the Texas L.P.
    c. DECEDENT transfers controlling interest in the Texas L.P. (5,500 Shares) to the 2001 Children's Irrevocable Trusts (DAUGHTER 1's Trust—2,125 Shares; DAUGHTER 3's Trust—1,125 Shares; DAUGHTER 2's Trust—1,125 Shares; and SON'S Trust—1,125 Shares).[43]

12. On June 27, 2001, the Articles of Organization for Oklahoma L.L.C. were filed with the Oklahoma Secretary of State, with its principal place of business in Oklahoma, FAMILY RANCH ADDRESS. At all times relevant hereto, the FAMILY RANCH was an established business that conducted business in Oklahoma and had a business situs in Oklahoma.[44] At all

[41] *Id*. at ¶ 3.

[42] *Id*. at ¶ 4.

[43] Stipulations, ¶¶ 57-60.

[44] Stipulation, ¶ 5.

times relevant hereto, the Oklahoma L.L.C. conducted an established business in Oklahoma and had a business situs in Oklahoma.[45]

13. On June 29, 2001, DECEDENT executed the following "Quit Claim Deeds, Bills of Sale and Assignments" (with an Effective Date of 7:00 a.m. local time, July 1, 2001) as "Grantor" and the Oklahoma L.L.C. as "Grantee":

COUNTY B, Oklahoma	Filed August 8, 2001, in Book XXX, Pages XXX-XXX[46]
COUNTY B, Oklahoma	Filed September 17, 2001, Book XXX, Pages XXX-XXX[47]

14. On June 29, 2001, DECEDENT executed the following "Assignment of Oil and Gas Leases" (with an Effective Date of 7:00 a.m. local time, July 1, 2001) as "Grantor" and the Oklahoma L.L.C. as "Grantee":

COUNTY K, Oklahoma	Filed August 27, 2001, in Book XXX, Pages XXX-XXX.[48]
COUNTY L, Oklahoma	Filed August 27, 2001, in Book XXX, Pages XXX-XXX.[49]

15. On June 29, 2001, DECEDENT, as the sole director, executed the Texas Corp.'s "Consent to Action Taken In lieu of Organizational Meeting of Directors," whereby:

(i) DECEDENT, (a Texas resident) was appointed Chairman and CEO, and Treasurer;
DAUGHTER 1, (an Oklahoma resident) was appointed President and Assistant Treasurer;
FOURTH WIFE, (a Texas resident) was appointed Secretary; and
ATTORNEY, (an Oklahoma resident), was appointed Vice President;

(ii) The Articles of Incorporation filed June 27, 2001, were ratified;

(iii) Bylaws were adopted;

(iv) 10,000 shares of common stock to the Revocable Trust were authorized, in accordance with the Subscription Agreement by which the Revocable Trust subscribed to the 10,000 shares at a purchase price of $350,000.00.

(v) The officers were authorized to cause the Texas Corp. to participate in the limited partnership agreement of the Texas L.P.

[45] Stipulation, ¶ 33 and Joint Exhibit 17.

[46] Joint Exhibits 36 through 38.

[47] Joint Exhibit 37.

[48] Joint Exhibit 39.

[49] Joint Exhibit 40.

(vi) The President or Vice President was authorized to act on behalf of the corporation, as the general partner of the Texas L.P.

16. Texas Corp., as the General Partner of Texas L.P., contributed cash in the amount of $350,000.00 (Sharing Ratio of .44%)[50] and Revocable Trust, as the Limited Partner of Texas L.P., contributed all of the assets of the Revocable Trust in the amount of $74,652,334.00 (Sharing Ratio of 99.53%)[51] for a total amount of $75,002,334.00, except (i) the Dallas Residence, (ii) approximately $14,100,000.00 in cash and securities, (iii) all household contents and personal effects, and the Big House, Related Office and Little House located on the FAMILY RANCH lands.

17. On June 29, 2001, Texas L.P., through Texas Corp., its General Partner, entered into an "Operating Agreement." Texas L.P. became the sole member of Oklahoma L.L.C. DAUGHTER 1, in her individual capacity, agreed to serve as the Manager of Oklahoma L.L.C.[52]

18. The United States Tax Court's holding in *Bongard*,[53] a Section 2036 case, is representative of the factors reviewed on the federal level to determine whether a transfer was made for "full and adequate consideration":

> Where the record establishes the existence of a legitimate and significant nontax reason for creating a family limited partnership, and the transferors received partnership interests proportionate to the value of the property transferred, the transfer satisfies the requirements of the bona fide sale for adequate and full consideration exception to the statute providing for inclusion in the decedent's gross estate of certain property transferred during his lifetime; for these purposes, the objective evidence must indicate that the nontax reason was a significant factor that motivated the partnership's creation, and a significant purpose must be an actual motivation, not a theoretical justification.

19. The bona fide sale for adequate and full consideration exception to the statute (Section 2036) providing for consideration exception to the statute providing for inclusion in the decedent's gross estate of certain property transferred during his lifetime is not limited to transactions involving unrelated parties, although intrafamily transactions are subject to a higher level of scrutiny.[54]

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[50] Stipulation, ¶ 40. Joint Exhibit 23.

[51] Stipulation, ¶ 41. Joint Exhibit 24.

[52] Stipulations, ¶¶ 43-45. Joint Exhibit 25.

[53] *Estate of Bongard v. C.I.R.*, 124 T.C. 95 (2005). *See Estate of Rosen v. C.I.R.*, T.C. Memo 2006-115, for a post *Bongard* decision under I.R.C. § 2036.

[54] *Id*. at ¶ 5. *See* 26 U.S.C.A. § 2036(a).

20. A transaction between family members is, however, subjected to heightened scrutiny to ensure that it is not a sham or disguised gift. In *Bongard*, the court cited *Kimbell*, which held "the decedent's transfers met the bona fide sale exception because the partnership was in actual possession of the assets transferred, partnership formalities were satisfied, [the decedent] retained sufficient assets outside of the partnership to meet her personal needs, some of the assets contributed were active business assets, and [the decedent] had nontax business reasons for creating the partnership."[55]

21. Keeping in mind that the IRS has already concluded that DECEDENT'S Estate is not subject to I.R.C. § 2036, the factors enumerated herein to determine "full and adequate consideration" are analogous to the phrase "without an equivalent in monetary consideration" found in Section 807(A)(2).

22. Viewed in the context of the factors enumerated in *Bongard*, the transfers reflect*:*

(1) Texas L.P was in actual possession of the assets transferred.
(2) Partnership formalities were satisfied and DECEDENT retained sufficient assets outside of the partnership to meet his personal needs.
(3) FAMILY RANCH was an active business.
(4) DECEDENT had legitimate and significant nontax reasons for creating the Texas L.P., as follows, to-wit:

On June 29, 2001, the Texas Corp. and the Co-Trustees of the Revocable Trust entered into The Limited Partnership Agreement[56] for Texas L.P., which provides in pertinent part as follows, to-wit:

> A. The parties hereto desire to form a limited partnership under Texas law for the purpose of engaging in various business and investment activities and to accomplish a variety of objectives, such as:
>
> (1) Providing for the long-term family ownership and financial viability of approximately 40,000 acres of ranch lands, and the related cattle and farming operations conducted thereon, located in COUNTY A, COUNTY B AND COUNTY C, Oklahoma, known as the FAMILY RANCH, some of which have been in the family since 1868;
>
> (2) Insuring the continued long-term amicable relationship among family members and entities who are partners or beneficiaries of partners hereunder;

[55] *Id.* at ¶ 5.

[56] Stipulation, ¶ 32 and Joint Exhibit 23. The agreement is executed by DECEDENT, as President of the Texas Corp. and the Co-Trustees of the Revocable Trust (DECEDENT, FOURTH WIFE and BANK).

(3) Simplification of the mechanics of annual gifting by family members in that the partnership form enables a partner to give a partnership interest by simple assignment not requiring public recordation, thus assuring privacy of asset transfers;

(4) Protection of assets transferred to the partnership from the possibility of any failed marriage of a partner that might occur in the future, noting that a partnership provides an excellent vehicle for the marshalling and maintenance of separate spousal assets and the growth thereof by way of realized and unrealized appreciation and receipt of income in the future;

(5) The resolution of any future disputes by arbitration as provided herein, recognizing that arbitration is preferable to jury litigation since there is a substantial risk that the fact finder in any jury trial may be unsophisticated and not able to reach the most reasoned and just result and that arbitration avoids any publicity that may be generated by means of a public trial or which produces an unfair advantage to the person seeking the claim;

(6) To the extent the partnership acquires an interest in real estate now and in the future, the avoidance of ancillary probate;

(7) Obtaining certain favorable economies of scale, such as reduced fees from money managers and commission fees from brokers with respect to trade transactions;

(8) Obtaining for the partners substantial protection from the claims of future creditors in that, under Texas law, the exclusive remedy against a partner's partnership interest is a "charging order" which prohibits the creditor from asserting claims against the assets of the partnership and does not require that the partnership recognize the creditor as a partner; and

(9) Providing for confidentiality of family financial information.

23. The transfers establish the existence of multiple, legitimate, and significant nontax reasons satisfying Section 807(A)(2)'s requirement that the transfers were made for an "equivalent in monetary consideration."

B. SECTION 807(A)(7) ANALYSIS OF TEXAS L.P.'S INTEREST IN OKLAHOMA L.L.C.

24. The Estate originally reported on the Oklahoma Estate Tax Return, Schedule E, Item #6, the "Portion of Limited Partnership Interest in FAMILY PARTNERSHIP, L.P., a Texas Limited Partnership Associated with Oklahoma Business." Texas L.P.'s interest had a date of death value of $10,841,428.15.[57] The Estate paid total estate tax in the amount of $1,233,242.00

[57] Stipulations, ¶¶ 74-77. Joint Exhibit 63.

and interest of $467.16.[58] On September 26, 2002, the Division issued the "Order Releasing Taxable Estate" and closed its file,[59] until the Estate filed the Request for Refund on September 24, 2003,[60] in response to the notice from the Texas Comptroller that it was increasing the Texas Taxable Estate to include the full fair market value of the Texas L.P. interest in Oklahoma L.L.C.[61]

25. The Oklahoma Supreme Court faced the same question in the *Perkins* case that is faced in this matter: "Whether the statute in force at the time of decedent's death authorized the State of Oklahoma to impose an estate tax upon a non-resident decedent's interest in those partnership assets (consisting of both real and personal property) which were physically located in this state."[62]

26. The Oklahoma Supreme Court held in *Perkins* that: "Whether a non-resident decedent's interest in partnership property located in Oklahoma constitute[d] tangible or intangible personal property for estate tax purposes must be based on law of Oklahoma and not [the] law of decedent's domicile."[63]

27. The Oklahoma Supreme Court also held in *Perkins* that a non-resident's interest in partnership located in Oklahoma constituted intangible personal property, and exempt from

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[58] Stipulation, ¶ 96. Joint Exhibit 63. Tr. at 143.

[59] Stipulation, ¶ 96. Joint Exhibit 73.

[60] Stipulation, ¶ 107. Joint Exhibit 85.

See OKLA. STAT. tit. 68, § 815(B) (West 2001), in pertinent part states:

> Provided further, the administrator, executor, trustee or any interested party who finds, within one (1) year from the date of mailing of the notice, an error or omission or inclusion of property on return, may file in writing, an objection with the Tax Commission specifically setting forth the grounds of his objection, and thereupon the Commission shall grant a hearing, and upon such hearing shall adjust the matters in controversy and add to or delete from the return such property as justice may require.

When the Estate received notice from the Texas Comptroller of a proposed increase in Texas Inheritance Tax, it did not sleep on its rights. The Estate filed a protective claim, within (1) one year, under Section 815(B) of Title 68 to preserve the viability of a refund claim. *See Neer v. State ex rel. Oklahoma Tax Com'n*, 1999 OK 41, 982 P.2d 1071.

The Estate's position on the proposed assessment of additional inheritance tax in the State of Texas does not doom the Estate's request for refund in this matter, because the parties have stipulated to the basic facts. The central questions in this matter are legal and concern whether the Division has properly applied the relevant statutory law to the stipulated facts.

[61] Stipulation, ¶ 98. Joint Exhibit 76.

[62] *Perkins v. Oklahoma Tax Commission*, 1967 OK 110, 428 P.2d 328.

[63] *Id.* at ¶1. *See also Wootten v. Oklahoma Tax Com'n*, 1939 OK 114, 91 P.2d 73.

estate taxes, based upon the wording of the Oklahoma statute in effect at the decedent's date of death.[64]

28. As used in the Oklahoma Estate Tax Code[65] the term "intangible property…means and includes all incorporeal property other than that named as tangible."[66]

29. The Oklahoma Estate Tax Code generally excludes the "intangible property" of a non-resident under Section 807(A)(1),[67] which in pertinent part states as follows, to-wit:

> However, in determining the value of the gross estate of a nonresident of this state, there shall be excluded all intangible personal property, except intangible personal property required to be included in such gross estate and subjected to tax under paragraph 7 of this subsection …

30. The Oklahoma Statute in effect at DECEDENT'S date of death (August 30, 2001), Section 807(A)(7) of Title 68, states as follows, to-wit:

> To the extent of the interest of any decedent, *who at the time of death was a nonresident of the State of Oklahoma, in any intangible personal property which is used in connection with any established business, having a business situs in this state including, the interest of such nonresident in a partnership the business of which is conducted in the state or the majority of assets of which are located in this state.* None of the intangible personal property subject to tax under this paragraph shall be exempt under the provisions for reciprocity in paragraph 1 of subsection A of this section. No property exempted by paragraph 6 of this subsection shall be subject to tax by reason of this paragraph; [Emphasis added.]

31. To constitute a "business situs" where intangible property is taxable other than owner's domicile, it must be shown that possession and control of property has been localized in

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[64] *Id*. at ¶2.

[65] OKLA. STAT. tit. 68, § 801 et seq. (West 2001).

[66] OKLA. STAT. tit. 68, § 807(D) (West 2001):

> The term "tangible property," as used in this article, means and includes all corporeal property such as real estate, goods, wares and merchandise, or any interest therein, or income therefrom. The term "real estate" includes any royalty, ground rental, leasehold interest or income therefrom. The terms "goods, wares, and merchandise" means and includes all property, real, personal or mixed, situated within the State of Oklahoma or within its jurisdiction. The term "intangible property," as used herein, means and includes all incorporeal property other than that named as tangible.

[67] OKLA. STAT. tit. 68, § 807(A)(1) (West 2001).

some independent business or investment away from owner's domicile so that its substantial use and value attaches to and becomes an asset of such outside business.[68]

32. The Estate stipulated that, "At all times relevant hereto, the FAMILY RANCH was an established business that conducted business in Oklahoma and had a business situs in Oklahoma."[69] The Estate also stipulated that, "At all times relevant hereto, Oklahoma L.L.C. conducted an established business in Oklahoma and had a business situs in Oklahoma."[70]

33. The Estate cites *Davis,*[71] an income tax case, for the proposition that "in order to constitute a business situs where intangible property is taxable, other than the owner's domicile, it must be shown that possession and control of the property has been localized in some independent business or investment away from the owner's domicile so that its substantial use and value attaches to and becomes an asset of the outside business…"[72] The case also holds that generally for income tax purposes, the situs of intangible property for purposes of taxation is owner's domicile.[73]

However, LAW PROFESSOR attempts to put a different spin on the *Davis* case for estate tax purposes,[74] the facts of which are easily distinguishable from the facts in this matter. In *Davis*, an Oklahoma resident did not pay income tax on the sale of stock in a Texas Corporation, claiming that the stock had acquired a business or commercial situs in Texas. The Oklahoma Supreme Court held that the stock did not have a business or commercial situs in Texas and that income tax was properly assessed against the Oklahoma resident.

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[68] *Groseclose v. Sutherland*, 1944 OK 307, 153 P.2d 479. *See In re Harris, Upham & Co.*, 1944 OK 191, 148 P.2d 191. *See also Glen v. Buck*, 1954 OK 210, 272 P.2d 573.

[69] Stipulation, ¶ 5.

[70] Stipulation, ¶ 33.

[71] *Davis v. Oklahoma Tax Commission*, 1971 OK 109, ¶ 3, 488 P.2d 1261.

[72] Estate's Post-Hearing Brief, Page 31.

[73] *Davis* at ¶1.

See Humphrey v. Bullock, 666 S.W.2d 586 (1984):

> There is authority for the proposition that the issue as to whether an interest in a tangible thing is classified as real or personal property should be determined by the law of the state where the property is located. Restatement of Conflict of Laws § 208 (1934). However, where, as here, there was neither pleading nor proof concerning the law of the applicable state, nor was there any motion that the trial court take judicial notice of such state's law, it must be presumed that the law of such state is the same as that of Texas.

[74] Tr. at 130-133.

In its Post-Hearing Brief the Estate asserts, "There is simply no evidence that the Limited Partnership Interest was used in connection with an Oklahoma business,"[75] but in ATTORNEY'S testimony, DECEDENT'S "overwhelming issues, though, coming out of that initial meeting were that he wanted to keep his family ranching operations intact." [76] As ATTORNEY testified:

> [FAMILY RANCH] wasn't just a farm or a bunch of land, it was an active – they had over 2,000 head of cattle, over 150 thoroughbred horses and lots of that sort of thing, there's lots of risk associated with all of that. So we put that – … the plan involved a subsidiary LLC for ranch. It was also a convenient and expeditious way for DAUGHTER 1 to manage the ranch.
>
> If you – once we conceived the notion of a limited liability company owning the ranch, the notion was to make that limited liability company a manager managed limited liability company under our – under the Oklahoma limited liability company, they can either be either member managed or manager managed, so we made it a manager managed, so that [DAUGHTER 1] could be in charge to run the ranch with the notion that [the] [Oklahoma L.L.C.] owned certainly all the land and all the cattle and farm equipment and horses and so forth.

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[75] Estate's Post-Hearing Brief, Page 32. Tr. at 52-53. ATTORNEY states that the Texas L.P., as the sole member of the Oklahoma L.L.C., is not transacting business in Oklahoma and is not required to register because the Oklahoma L.L.C. is manager managed, but no Oklahoma law is cited by the Estate to support this conclusion.

"The Oklahoma Revised Uniform Limited Partnership Act does not define 'transacting business' or attempt to set out activities that would not constitute transacting business in Oklahoma." 3A VRN-OKFORM § 6.55, *at* *http://www.westlaw.com* (last visited October 23, 2006).

However, where a foreign limited partnership transacts business in the state without registration, is addressed by OKLA. STAT. ANN. tit. 54, § 355 (West 2001):

> A. A foreign limited partnership transacting business in this state may not maintain any action, suit or proceeding in any court of this state until it has registered in this state.
>
> B. The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit or proceeding in any court of this state.
>
> C. A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this state without registration.
>
> D. A foreign limited partnership, by transacting business in this state without registration, appoints the Secretary of State as its agent for service of process with respect to causes of action arising out of the transaction of business in this state.

The fact that the Texas L.P. is not registered in the State of Oklahoma is not helpful in determining whether it is "transacting business," because under Section 355, the Texas L.P. is only prevented from "maintain[ing] any action, suit or proceeding in any court of this state until it has registered in this state."

[76] Tr. at 31-33. *See* Joint Exhibit 69, the Affidavit of AFFIANT, wherein he states, "DECEDENT was most interested in the preservation of his ranch properties, parts of which had been in his family since the late 1800's."

> But would also have its own capital structure and internal management structure. Instead of being independent and separate from the LLC, I mean, from the LP, the limited partnership.[77]

34. The facts in this matter reflect that:

> The "possession and control" of [DECEDENT'S] interest in the [Texas L.P.] allocable to the [FAMILY] RANCH (which includes the Ranch real property, livestock, facilities, and ranching equipment) has been "localized" in Oklahoma away from [DECEDENT'S] domicile (Texas). The [FAMILY] RANCH is held in an Oklahoma limited liability company with a very active Manager who works daily at the various [FAMILY] RANCH properties and oversees the [FAMILY] RANCH budget, employees and daily operations, all of which utilize the tangible personal property and real property located in Oklahoma. The "possession and control" of [DECEDENT'S] interest in the [Texas Limited] Partnership allocable to the [Texas Limited] Partnership's Oklahoma mineral interests are similarly "localized" in Oklahoma.[78]

35. Oklahoma L.L.C. was formed around FAMILY RANCH, some of which had been in DECEDENT'S family since 1868, and at all times relevant hereto, the FAMILY RANCH was an established business that conducted business in Oklahoma and had a business situs in Oklahoma.[79] Also, Oklahoma L.L.C. at all times relevant hereto conducted an established business in Oklahoma and had a business situs in Oklahoma.[80]

36. Texas L.P. is the sole member of Oklahoma L.L.C., with the number one reason for Texas L.P.'s creation being, "Providing for the long-term family ownership and financial viability of approximately 40,000 acres of ranch lands, and the related cattle and farming operations conducted thereon, located in COUNTY A, COUNTY B AND COUNTY C, Oklahoma, known as the FAMILY RANCHES, some of which have been in the family since 1868."[81]

37. Texas L.P.'s interest in Oklahoma L.L.C. has acquired a business situs in Oklahoma and the value of Texas L.P.'s interest in Oklahoma L.L.C. is includible in determining the value of the Estate under the provisions of Section 807(A)(7).[82]

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[77] Tr. at 34-35.

[78] Joint Exhibit 79.

[79] Stipulation, ¶ 5.

[80] Stipulation, ¶ 33.

[81] Joint Exhibit 23.

[82] In its Post-Hearing Brief, the Estate cites *State Tax Commission of Utah v. Aldrich*, 316 U.S. 174, 62 S.Ct. 1008 (1942), and *Curry v. McCanless*, 307 U.S. 357 (1939), for the proposition that "the United States Supreme

C. VALUATION OF TEXAS L.P.'S INTEREST IN OKLAHOMA L.L.C.

38. The Division's position echoes the stance taken by the IRS for many years, that an estate plan like the one in this matter should not receive "discounts" for entities controlled by the members of the decedent's family. However, this position has been uniformly rejected by the courts. The IRS changed its position after the *Minahan*[83] case, where the taxpayer was awarded attorney fees in a case where the Government "persists in the fact of the *Estate of Andrews*[84] and its progenitors [to espouse a family attribution approach]." The IRS modified its position by issuing Revenue Ruling 93-12,[85] which in pertinent part, states as follows, to-wit:

> After further consideration of the position taken in Rev. Rul. 81-253, and in light of the cases noted above, the Service has concluded that, in the case of a corporation with a single class of stock, notwithstanding the family relationship of the donor, the donee, and other shareholders, the shares of

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Court has held that taxation of an intangible by a state other than the decedent's domicile is constitutional only when a sufficient nexus is established between the taxing state and the interest taxed."

In *Curry* at ¶¶ 12-15, the Court found:

> In cases where the owner of intangibles confines his activity to the place of his domicile it has been found convenient to substitute a rule for a reason (citations omitted), by saying that his intangibles are taxed at their situs and not elsewhere, or, perhaps less artificially, by invoking the maxim mobilia sequuntur personam, (citations omitted), which means only that it is the identity or association of intangibles with the person of their owner at his domicile which gives jurisdiction to tax. But when the taxpayer extends his activities with respect to his intangibles, so as to avail himself of the protection and benefit of the laws of another state, in such a way as to bring his person or property within the reach of the tax gatherer there, the reason for a single place of taxation no longer obtains, and the rule is not even a workable substitute for the reasons which may exist in any particular case to support the constitutional power of each state concerned to tax. Whether we regard the right of a state to tax as founded on power over the object taxed, as declared by Chief Justice Marshall in *McCulloch v. Maryland*, through dominion over tangibles or over persons whose relationships are the source of intangible rights; or on the benefit and protection conferred by the taxing sovereignty, or both, it is undeniable that the state of domicile is not deprived, by the taxpayer's activities elsewhere, of its constitutional jurisdiction to tax, and consequently that there are many circumstances in which more than one state may have jurisdiction to impose a tax and measure it by some or all of the taxpayer's intangibles.

The Fourteenth Amendment does not require the court to fix a single exclusive place of taxation of intangibles.

In *Aldrich* at ¶¶ 4-5, the Court found that "There is no constitutional rule of immunity from taxation of intangibles by more than one state.

[83] *Minahan v. C.I.R.*, 88 T.C. No. 23, 88 T.C. 492, 500 (1987).

[84] *Estate of Andrews v. Commissioner*, 79 T.C. 938 (1982).

[85] Rev. Rul. 93-12, 1993-7 I.R.B. 13, 1993-1 C.B. 202, 1993 WL 15534 (IRS RRU)

other family members will not be aggregated with the transferred shares to determine whether the transferred shares should be valued as part of a controlling interest.

39. The value of Texas L.P.'s interest in Oklahoma L.L.C. includable in the Oklahoma Estate Tax Return[86] is calculated as follows, to-wit:

Value of FAMILY RANCH from appraisal:	$21,987,572.00
Oklahoma Portion of Mineral Interests:	198,362.00
Total Net Asset Value of Oklahoma Portion of Partnership:	$22,185,934.00
Less: 51% Discount for Minority Interests and Marketability (rounded):	$11,298,742.00
Value of Oklahoma Portion of Limited Partnership:	$10,877,192.00
Percentage Interest in Limited Partnership Interest:	99.57965%
Total Value of Oklahoma Portion of Limited Partnership Interest:	$10,841,428.00

40. The value of Texas L.P.'s interest in Oklahoma L.L.C. was correct as originally reported and filed in the Oklahoma Estate Tax Return[87] and which was accepted by the Division.[88]

DISPOSITION

It is the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the protest of the Estate to the Amended Order Assessing Tax should be sustained.

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[86] Stipulation, ¶ 77. Joint Exhibit 63.

[87] *See* Note 86.

[88] *See* Note 86.

See also Joint Exhibit 99, the Amended Order Assessing Tax. The Division appears to disregard the entities and brings the FAMILY RANCH properties back into the Estate at the full market value of $19,641,227.00, according to the appraisals of the APPRAISAL CO. and ASSET CO., while at the same time recognizing the $5,844,625.19 note payable by the Revocable Trust to the Texas L.P.

AUDITOR offered no explanation for increasing the values other than the Amended Order Assessing Tax was issued on "advice of counsel." Tr. at 145.

It is further the ORDER of the OKLAHOMA TAX COMMISSION, based upon the specific facts and circumstances of this case, that the protest of the Estate to the denial of the Estate's Claim for Refund should be denied.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.