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**Generational Split Dollar - IRS Argues Inside Build Up is
Retained "Income" of Decedent Triggering Estate
Inclusion of Cash Value**

This WRNewswire was created exclusively for AALU members by experts at **Baker Hostetler LLP** and the AALU staff, led by **Jonathan M. Forster, Partner, Rebecca S. Manicone, Partner, and Carmela T. Montesano, Partner.**

There has been significant Tax Court activity this year related to generational split dollar arrangements (GSDs), which involve split dollar arrangements between a parent and the parent's irrevocable trust to fund the trust's purchase of a life insurance policy typically insuring a child. At the GSD's termination (death of the insured child or earlier agreement of the parties), the parent is entitled to repayment equal to the greater of the premiums advanced or the policy's cash value. Arguably, the present fair market value of this repayment right is subject to a discount for gift/estate tax purposes because the insured

child is not expected to die for many years, and the parent cannot unilaterally accelerate repayment.

As discussed in [WRMarkeplace No. 18-18](#), over the summer, the Tax Court denied summary judgment motions made by estates in two GSD cases, *Est. of Cahill* and *Est. of Morrissette*, as it refused to reject the IRS position that the full, undiscounted cash value of a GSD policy should be included in the decedent's estate. The *Cahill* case later settled, with the estate conceding in full on the estate tax valuation issue. Following its *Cahill* success, the IRS has now filed its own summary judgment motion in *Morrissette*, requesting that the Tax Court rule, as a matter of law, that the build-up in cash surrender value of a GSD policy is "income" in which the parent has retained a life interest under Internal Revenue Code §2036(a)(1), triggering in estate inclusion of the policy's full cash surrender value. The IRS also requests that the Tax Court disregard the parent's ownership of the repayment right under the GSD and effectively treat her as the owner of the underlying policy' cash surrender value (again, pulling the full value into her estate).

To be clear, this is a motion by the IRS, not a ruling--and the eventual outcome at the Tax Court is uncertain. However, these arguments are very broad and may have inadvertent implications for split-dollar and life insurance planning beyond GSD. AALU will continue to monitor legal developments and will be providing members with additional analysis in the near future, and will take appropriate action when necessary.

Questions?

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