GSD IN FRONT OF THE TAX COURT, FINALLY

Overview. Generational split dollar (**GSD**)[7] generally is a private split dollar arrangement (**SDA**) between a client and his or her ILIT designed to fund the ILIT's acquisition of life insurance on the client's child or more remote descendant. In one version of GSD, a client enters into a non-equity, economic benefit SDA with the ILIT to fund the life insurance purchase. The client holds a reimbursement right under the SDA equal to the greater of the policy's cash value or the premiums paid by the client. The SDA terminates upon the earlier of the insured's death or the mutual agreement of the ILIT and the client. The client has no right to access the policy's cash value during the SDA term and has no unilateral right to terminate the SDA.

Arguably, under these circumstances: (1) pursuant to the split-dollar Treasury Regulations (**SD Regulations**),[8] the client only reports as a gift the cost of the annual economic benefit provided to the ILIT, which is the "cost of current life insurance protection" provided by the policy (i.e., the annual term premium)[9] and (2) the estate tax value of the client's reimbursement right under the SDA is believed to be entitled to a significant valuation discount, since the client cannot access the policy's value or unilaterally terminate the SDA, and the insured's death is not expected for many years.

Enter *Morrissette & Levine*. In 2016, the U.S. Tax Court issued limited rulings in *Est. of Morrissette v. Commissioner*[10] and *Est. of Levine v. Commissioner*,[11] which held that, under economic benefit GSDs similar to the one above, the SD Regulations solely determined the gift tax consequences of the taxpayer's premium payments under the SDA, confirming that the taxpayer's annual gift was limited to the annual economic benefit provided to ILIT -- good news.

What It Means. Although *Morrissette* and *Levine* were the first reported decisions on GSD, Heckerling presenters emphasized that these decisions dealt with the narrow issue of gift taxation largely because the cases fell almost squarely within the SD regulations. The IRS, however, does not agree with these decisions and may continue to challenge the gift tax issues under economic benefit GSDs.