

**Steve Leimberg's Estate Planning
Email Newsletter Archive Message #2663**

Date:13-Sep-18

**Subject: Lee Slavutin, Richard Harris and Martin M. Shenkman:
Intergenerational Split Dollar – Cahill Case Settled – Taxpayer
Concedes on Split Dollar Valuation Issue**

“The Cahill intergenerational split dollar case received a lot of attention in June when the Tax Court denied the taxpayer’s request for partial summary judgement. In the taxpayer’s petition for partial summary judgment he requested the Court hold that IRC Sections 2036, 2038 and 2703 should not apply to the valuation of the split dollar receivable. The taxpayer had claimed a 98% discount on the value of that receivable. The Tax Court ruled that these three Code Sections could apply to the valuation. The tone of the Tax Court opinion was not favorable to the Cahill estate. Now, only two months later, the Cahill Estate has settled with the IRS and conceded in full on the split dollar valuation issue.

The Cahill settlement is a victory for the IRS and likely will embolden the IRS to challenge other economic benefit intergenerational split dollar cases, especially if the facts are “bad. It may also embolden the IRS to challenge loan intergenerational split dollar arrangements, even though these were not directly implicated in the Cahill or other cases. The Cahill case is not a statement of law – we will have to wait for Levine and Morrisette to be decided to know the final position of the Tax Court.

As we stated in [Estate Planning Newsletter #2651](#), one should probably not start a new economic benefit intergenerational split dollar agreement if a discount on the receivable is a feature of the plan. Those pursuing loan intergenerational split dollar plans may want to evaluate the possible impact of the Cahill case – can IRC Sections 2036, 2038 and 2703 be applied to loan arrangements? The imposition of a 20% penalty in the Cahill case and the IRS’s willingness to settle on other issues to win on the split dollar receivable should send a strong message to practitioners.”

Lee Slavutin, Richard Harris and Martin Shenkman provide [LISI](#) members with important commentary on the settlement of the *Cahill* case.ⁱ

Lee J. Slavutin is a principal in **Stern Slavutin 2, Inc.**, a life insurance and estate planning firm in New York. He graduated from Monash University Medical School in Melbourne, Australia in 1974 and became a Fellow of the Royal College of Pathologists of Australia and a Diplomat of the American Board of Pathology in 1981. Dr. Slavutin left the practice of medicine in 1982 and entered the life insurance business in 1983. He is a member of the Association of Advanced Life Underwriting and the Million Dollar Round Table and is a Chartered Life Underwriter with the American College. Dr. Slavutin has published 170 articles on insurance and estate planning topics for CCH, Warren Gorham and Lamont, Practitioners Publishing Company (PPC), New York Law Journal and others. He is a member of the CCH Estate and Financial Planning Advisory Board, and the Advisory Panels of PPC and Bottom Line Personal. He is the Author of “PPC’s Guide to Life Insurance Strategies”, 19 th edition (2017), published by Thomson Reuters. Dr. Slavutin has spoken before the American Law Institute/American Bar Association, the New York County Lawyers’ Association, the American Institute of Certified Public Accountants (CPAs), the New Jersey State Society of CPAs, the Association of Advanced Life Underwriting, the Million Dollar Round Table, and the UJA-Federation Annual Tax and Estate Planning Conference, as well as many New York accounting and law firms. He was invited to testify before the New York State Senate on the effectiveness of the insurance rating firms and worked with the U.S. General Accounting Office on a similar project. He is married to Dee and they have two children, Aaron and Lydia. He can be contacted at ls@sternslavutin.com

Richard L. Harris, CLU, AEP, TEP, is a life insurance consultant and expert witness who has been in the life insurance business since 1970. He is widely regarded as one of the most knowledgeable and respected people in the field. His goal is to help other professionals and their clients. Among his accomplishments he is Chair of the Insurance Committee, Trusts & Estates; Professional Expert, WR Newswire An AALU Washington Report; Contributor, Leimberg Information Systems Inc. email Newsletters; Member of Committee on Insurance and Financial Planning, American Bar Association, Real Property Trusts & Estates Section. He has authored and co-authored many articles that have appeared in: Trusts & Estates, Estate Planning, Steve Leimberg’s Newsletters, Journal of Wealth Management, e Report of American Bar Association Real Property Trust & Estate Law

Section, Wealth Strategies Journal, Journal of Practical Estate Planning, WR Newswire, an AALU Washington Report; and he has co-authored (with Russ Alan Prince) the book: Advanced Planning with the Ultra-Affluent: A Framework for Professional Advisors published by Institutional Investor. He can be contacted at richard@rlharrisllc.com.

Martin M. Shenkman, CPA, MBA, PFS, AEP, JD is an attorney in private practice in Fort Lee, New Jersey and New York City who concentrates on estate and closely held business planning, tax planning, and estate administration. Estate Planning After the Tax Cut and Jobs Act of 2017, written by Marty Shenkman, Jonathan Blattmachr and Joy Matak, is available at the link below as an e-book on https://www.amazon.com/Estate-Planning-after-Jobs-2017-ebook/dp/B0797F1NVD/ref=sr_1_5?s=books&ie=UTF8&qid=1516724216&sr=1-5&keywords=martin+shenkman or as a PDF download on www.estateplanning2018.com. Steve Leimberg recently noted that: Every tax professional in the country will (or should be) reading this book! This is the most complex and far reaching tax law passed in the over 50 years I've been studying, teaching, and writing about tax law and this resource arms you not only with the necessary and vital information you need to know but also the thinking and planning concepts of three of the brightest minds in the tax world!

Here is their commentary:

EXECUTIVE SUMMARY:

The Cahill intergenerational split dollar case received a lot of attention in June when the Tax Court denied the taxpayer's request for partial summary judgement. In the taxpayer's petition for partial summary judgment he requested the Court hold that IRC Sections 2036, 2038 and 2703 should not apply to the valuation of the split dollar receivable. The taxpayer had claimed a 98% discount on the value of that receivable. The Tax Court ruled that these three Code Sections could apply to the valuation. The tone of the Tax Court opinion was not favorable to the Cahill estate. Now, only two months later, the Cahill Estate has settled with the IRS and conceded in full on the split dollar valuation issue.

FACTS:

Cahill, Morrissette and Levineⁱⁱ were three intergenerational split dollar cases in the Tax Court. Morrissette and Levine received favorable rulings

on the gift tax valuation of the initial premium payment in 2016.ⁱⁱⁱ In June of this year the Tax Court denied a request for partial summary judgement in Cahill and Morrissette. In both cases the Taxpayers asked the Court to rule that IRC Sections 2703 (Cahill and Morrissette) and sections 2036 and 2038 (Cahill) did not apply to the valuation of the split dollar receivables in each of the decedent's estates. The Tax Court made it clear that all three Code sections could apply to the valuation of the receivable and left the final decision to be determined at trial or settled.^{iv}

The Cahill case was just settled on August 16, 2018.^v The Cahill facts were not good:

- The son, acting for his incompetent father as trustee of a revocable trust, set up an ILIT.
- The ILIT trustee was the son's cousin and business partner.
- The insureds were the son and his wife.
- The father borrowed \$10,000,000 from an outside lender, repayable in five years.
- The father transferred the \$10,000,000 to the ILIT under an economic benefit split-dollar arrangement.
- The ILIT used the \$10,000,000 to pay single premiums on each of the policies.
- The father died within a year, and the cash value of the policies was more than \$9,600,000.
- The estate took a 98% discount on the receivable.

The facts in the Morrissette case appear more favorable than those in Cahill and Morrissette is scheduled to go to trial on May 6, 2019.^{vi} The Levine case went to trial in November 2017 but has not yet been decided.^{vii}

The Cahill Settlement

The Stipulation of Settled Issues contains 17 items^{viii}:

- Items #1 to #10 are related primarily to the valuation of notes receivable by the estate. These notes were issued when loans were made by the Richard and Shirley Cahill Revocable Trust to trusts for other family members. These loans were not related to the split dollar agreements. The IRS originally claimed that the notes were

undervalued but agreed to accept the values reported on the estate tax return as part of the settlement.

- Items #11, 12 and 13 – These items relate to the value of the split dollar receivables in the Cahill Estate. The Estate reported an aggregate value of \$183,700. The IRS asserted a value of \$9,611,624, equal to the aggregate cash surrender value of the policies as of the date of the decedent's death.^{ix} The Estate conceded that the correct value was \$9,611,624.
- Items #14 and #15 relate to the value of total adjusted taxable gifts – the amount was increased by \$7,902 by the IRS. The taxpayer conceded. All these gifts, except for a small gift in 2010, were made before the split dollar agreements were created.
- Item # 16 – Taxpayer is liable for the accuracy-related penalty on the deficiency under IRC Section 6662 at the rate of 20%.
- Item #17 – The only issue remaining in computing the deficiency is the correct amount of additional administrative expenses to which the estate is entitled.

In summary, the estate's valuation of the notes receivable did not change, but the estate's value of the split dollar receivable was increased by \$9,427,924.

The net change for the estate is essentially a deficiency for the tax payable on a \$9.4 million split dollar receivable.

The estate will be liable for a penalty on the deficiency.

COMMENT:

Significance of Cahill Settlement

The Cahill settlement is a victory for the IRS and likely will embolden the IRS to challenge other economic benefit intergenerational split dollar cases, especially if the facts are "bad."^x It may also embolden the IRS to challenge loan intergenerational split dollar arrangements, even though these were not directly implicated in the Cahill or other cases. The Cahill case is not a statement of law – we will have to wait for Levine and Morrisette to be decided to know the final position of the Tax Court.

As we stated in [Estate Planning Newsletter #2651](#), one should probably not start a new economic benefit intergenerational split dollar agreement if a discount on the receivable is a feature of the plan. Those pursuing loan intergenerational split dollar plans may want to evaluate the possible impact of the Cahill case – can IRC Sections 2036, 2038 and 2703 be applied to loan arrangements? The imposition of a 20% penalty in the Cahill case and the IRS’s willingness to settle on other issues to win on the split dollar receivable should send a strong message to practitioners.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Lee Slavutin

Richard Harris

Martin Shenkman

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ⁱ This material is approved for use with Attorneys, CPA’s and other Life Insurance Professionals. Lee Slavutin and Richard Harris are not authorized to give tax or legal advice. Consult your own personal attorney, legal or tax counsel for advice on specific legal and tax matters.

ii Cahill – TC Docket No. 10451-16; Morrissette – TC Docket 4415 -14; Levine – TC Docket 13370-13.

iii LISI Estate Planning Newsletters [2408](#), [2414](#), [2418](#), [2436](#), [2443](#), [2444](#).

iv LISI Estate Planning Newsletters [2645](#), [2651](#), [2653](#).

v Estate of Richard Cahill, US Tax Court Docket No. 10451-16, Joint Stipulation of Settled Issues, August 16, 2018.

vi Estate of Clara M. Morrissette, US Tax Court Docket No. 4415-14, Joint Status Report, August 15, 2018.

vii Estate of Marion Levine, US Tax Court Docket No. 13370-13, December 20, 2017 Transcript of 11/13/2017 Received (Trial).

viii Ibid #iv.

ix Estate of Cahill, T.C. Memo. 2018-84, June 18, 2018.

x Ibid #ii.