

THE RISELING REPORT

EXCLUSIVELY FOR THE ESTATE PLANNING PROFESSIONAL

SPLIT DOLLAR—IT’S ABOUT TIME . . .

. . . to make some decisions about existing Split Dollar Plans.

January 1, 2004 is approaching. This date is significant for Split Dollar Plans because the new rules concerning **equity** Split Dollar Agreements will be fully implemented.

The IRS’ position is set forth in IRS Notice 2002-8, Proposed Regulations and IRS Notice 2002-59. Currently existing split dollar arrangements (with some very rare exceptions) will not work as they were originally devised. As a general rule, equity split arrangements (generally, most split dollar arrangements are “equity” type) under which equity is accruing to the insured (this generally happens in the 6th or 7th policy year, but could be sooner or later, depending upon the life insurance policy) will face income tax on the equity build up unless the plan is terminated or modified.

Here are some ideas about what can be done:

1. **Termination.** The equity split dollar plan can simply be terminated prior to January 1, 2004. If the plan is terminated, your client might want to consider the following:

- a. If the life insurance policy still needs premium payments, it might be possible to restructure the policy through a Code Section 1035 exchange into a policy that doesn’t require premium payments;
- b. As an alternative, premiums can be bonused to an employee (if it is an employer pay split dollar), or
- c. Check and see if the premium amounts can be modified to make it easier for the client to gift the premiums to the policy.

2. **Revise the Agreement.** It is possible to revise a split dollar agreement to satisfy the requirements under the Internal Revenue Service notices. Basically, the agreement can be changed to a loan arrangement governed by Code Section 7872 (below market interest rate loans). This may be more complicated than most clients might want to consider.

There may be other possible alternatives, but the bottom line here is that clients should review existing split dollar arrangements if they have an equity build up. Equity build ups after January 1, 2004 will be subject to income tax unless changes in the split dollar plan are implemented.

If you have any comments or questions regarding this Riseling Report, please contact us.

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