

# FINAL REPORT - SUPPLEMENTAL

This is an additional report from the 2003 Heckerling Estate Planning Institute.

It summarizes the Thursday afternoon breakout session entitled "Split-Dollar Life Insurance." The four panelists were

Lawrence Brody, Jonathan G. Blattmachr, Mary Ann Mancini and Michael Weinberg.

The editors wish to thank Mary Ann for providing this synopsis.

As we have done in January for the last six years, and again with the permission of the University of Miami School of Law Center for Continuing Legal Education, we will be posting to this list throughout the coming week highlights of the proceedings of the 37th Annual Philip E. Heckerling Institute on Estate Planning that is being held January 6-10, 2003 at the Fontainebleau Hilton Resort and Towers in Miami Beach, Florida.

A complete listing of the proceedings and speakers is available on the Institute's Web site.

The URL for that site is <http://www.law.miami.edu/heckerling>.

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## REPORT - Supplemental report

Larry Brody began by introducing the panelists quickly by stating that they needed no introduction. He explained what the panel would try and cover during the 90 minute presentation. Mary Ann Mancini then began by providing an overview of what happened in the split dollar area in 2002. The year began with Notice 2002-8, a generally favorable Notice for taxpayers, but by the time of the issuance of the Proposed Regulations on Split Dollar in July, after six months of a struggling economy, corporate scandal and stories of excessive executive compensation, including split dollar plans, the Proposed Regulations were much less favorable than expected. Shortly thereafter a New York Times article drew the public's attention, including Congressional attention, to certain split dollar arrangements and Treasury and the IRS reacted by issuing Notice 2002-59 less than three weeks later. In the meantime, Congress passed the Sarbanes Oxley bill with its impact on split dollar, namely a prohibition on loans and extensions of credit to executives of publicly traded companies. The year closed with a Republican controlled congress and possible hearings on Sarbanes Oxley in the spring of 2003.

Jonathan Blattmachr then discussed Notice 2002-8, and the provisions of the same, including the favorable grandfather and transition rules of the Notice. He pointed out the different set of rules that apply to arrangements entered into before January 28, 2002 as opposed to the rules that apply for arrangements entered into after that date but before the issuance of Final Regulations. Arrangements entered into before January 28, 2002 have the most favorable provisions, including the ability to terminate the arrangement tax free before January 1, 2004, the ability to recharacterize the arrangement as a loan for all periods after January 1, 2004, the ability to continue to use P.S. 58 rates and the ability to continue to use the insurer's published premium rates. The rules for arrangements entered into after January 28, 2002 are less favorable (but still more favorable than the Proposed Regulations) and include the ability to elect the economic benefit tax regime or the loan tax regime and the ability to continue to use the insurer's published premium rates, with certain modifications.

Larry Brody then discussed some of the issues and ambiguities of Notice 2002-8, such as the requirement in the Notice that for pre-January 28, 2002 arrangements to take advantage of the grandfathering rules, the company must be entitled to receive full repayment of all of its payments. Larry also observed that taxpayers have received no guidance on

when an arrangement is entered into, for purposes of grandfathering. Larry then addressed planning under Notice 2002-8 and when and if split dollar arrangements that fall under the Notice should be terminated or continued to be maintained and the factors that should be considered when making that determination.

Michael Weinberg then made a power point presentation on the planning opportunities under the Notice. His presentation began with a discussion on how tax efficient split dollar plans can be for funding the clients' needs for liquidity, such as the need to meet estate tax burdens, business continuity plans, buy-sell agreements, charitable bequests and installment sales. In addition to being tax effective, Notice 2002-8 also provided the taxpayer with flexibility since the taxpayer can now switch between a loan transaction and an economic benefit transactions. He then reviewed some sample cases that illustrated when the switch should occur and the consequences of the switch. Mike ended his presentation with six questions a client should ask his or her insurance agent to ensure that the agent has the requisite expertise to work on this type of transaction.

Finally, Mary Ann Mancini provided a brief synopsis of the provisions of the Proposed Regulations and some of the issues presented by these Regulations, such as the broad definition of a split dollar arrangement found in the Proposed Regulations and the confusing owner and deemed owner rules.

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