Tax-Motivated Life Insurance: An Exciting and Helpful Tool

*by Patrick J. Collins**
San Francisco, California

What do the following insurance programs have in common?

- Tax arbitrage single-pay life insurance
- Minimum Deposit Life Insurance
- Section 79 Group Permanent Insurance
- Retired Lives Reserve
- Split Dollar and Reverse Split Dollar Insurance
- Corporate Owned Life Insurance (COLI)
- 419A(f)(6) Welfare Benefit Trust Insurance

The somewhat seasoned estate and business attorney may recognize that the above-listed programs are "tax-advantaged" insurance products. Some products date as far back as the 1950s and constitute an important percentage of product sales for major insurance carriers. Unfortunately, like the Clifford Trust tax shelters that became extinct when the grantor trust rules changed, many of these "exciting and helpful" tools have also disappeared from the financial landscape.[1] This is, on its face, not remarkable because frequent changes in tax law require modification or abandonment of noncompliant planning strategies.

A Persistent Pattern of Abuse?

What is remarkable, however, is the argument advanced by Joseph M. Belth, professor emeritus of insurance at the University of Indiana, in the opening part of a recent article. Belth's article reports on court rulings upholding the IRS position that Corporate Owned Life Insurance (COLI) plans used to pre-fund medical benefits for retired employees are nothing more than sham tax shelters.[2] Belth implies that COLI is merely the most recent example of a persistent pattern of insurance industry marketing schemes that have left its customers holding the bag for billions of dollars in lost tax benefits as well as wasted product acquisition costs and plan design expenses. Specifically, Belth alleges that:

- Prominent life insurers aided and abetted by creative and aggressive promoters, hire accountants, actuaries, attorneys, and others to develop and market "tax-motivated life insurance products."
- These products represent "sophisticated assaults on the United States Treasury," forcing the IRS to scrutinize their legality; and, where current tax law is insufficient to put a stop to abusive tax shelters disguised as life insurance programs, to encourage Congress to pass restrictive legislation.
- As a result of Congressional action and court rulings, insurance buyers may not only fail to realize tax benefits promised by the sales agent, but also may owe substantial penalties and interest because deductions or exclusions rest on speculative interpretations of tax rulings.

This article seeks to:

1) provide additional perspective on Belth's assertions;

2) comment on current tax-motivated insurance marketing efforts; and,

3) suggest appropriate actions for trustees and legal counsel in light of the current regulatory environment.

Consumer Demand for Life Insurance

One of the basic principles of insurance is that the carrier must collect a sufficient amount of premiums so that, in conjunction with investment earnings thereon, it has adequate funds to pay expenses (including claims) and to achieve the required return on owners' capital. This means that, in a statistical sense, the present value of premiums that you pay to an insurance carrier are higher than the present value of benefits that you are likely to receive. Technically, from the perspective of the insurance buyer, the expected net present value of any insurance product (auto, home, life) must be negative; and, from the perspective of the insurance seller (and the state regulators that oversee company solvency), the expected net present value of any insurance product must be positive.

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[1] The phrase "exciting and helpful" is taken from the conclusion of Richard Shectman's article entitled "Retired Lives Reserve: The Product," *CLU Journal* (October, 1980), p. 26: "The leverage generated by these tax consequences, coupled with permanent death protection provided the insured, provides the estate and business planner with an exciting and helpful tool. Effectively, the RLR policy is providing the marketplace with a 'permanent term insurance policy.'"

[2] Belth, Joseph M., "Legal Setbacks For Tax-Motivated COLI Plans," *The Insurance Forum* (March, 2002), pp. 21-30.

This economic fact of life is in no way an argument against buying insurance to hedge unacceptable economic risk. Other than gamblers who exhibit inverted risk aversion curves (the thrill of the risk compensates for the expectation of loss), risk averse investors derive positive utility from paying money to avoid unnecessary gambles. The unique slope of each investor's risk aversion curve determines the amount that they are willing to pay. Risk-neutral investors will acquire insurance coverage only if it is free (or employer paid). Highly risk averse investors are willing to pay substantial premiums to mitigate certain economic risks. Investors purchase put options to protect accumulated wealth; life insurance buyers pay premiums to hedge against lost income in the event of early death, or to hedge the financial consequences of forced asset liquidations when settling an estate or unwinding a business arrangement.

Two consequences flow from the basic principle of insurance:

1) Life insurance is a price sensitive product (price elastic). The lower the price (technically, the closer the premium cost to the actuarially fair value of the protection), the greater is the demand for the product. This runs counter to the conventional wisdom that insurance is sold rather than bought and that high commissions are necessary to reward agents for convincing their customers to do the right thing.

2) Absent special tax considerations, any hedge instrument like protective puts or insurance contracts must systematically subtract value from the owner's estate. This runs counter to the oft-heard sales pitch that life insurance enables estate taxes to be paid with "discounted dollars."

Indeed, a recent and valuable book published by finance professors at York University in Toronto and Concordia University in Montreal, points out that, if you are fortunate enough to possess a large and liquid estate, purchase of a life insurance policy to fund estate transfer costs is "simply prepaying your kids' tax bill. If you want to, go ahead, but the net present value of the strategy will be negative."[3] Thus, from the prospective of estate liquidity planning, a proper analysis seeks not to determine how much a life insurance policy will add to a family's net worth, but rather, how much wealth will an insured hedge position subtract relative to a forced sale of illiquid assets to pay estate transfer costs.

Enhancing Consumer Demand through Tax Arbitrage

Life insurance, because it is price elastic, becomes more attractive in the marketplace if the government subsidizes its purchase. As a matter of public policy, the government subsidizes home ownership (deductibility of qualifying mortgage interest payments) and life insurance (tax deferral of gains on the increase in policy cash value, and exclusion of qualified death proceeds from income taxation). Granting the life insurance contract preferred tax status in order to promote pubic policy goals is not, however, the same as granting the insurance industry a license to develop and promote tax arbitrage strategies. Milevsky and Gottesman define tax arbitrage as "the science of taking investment positions that capitalize on quirks or inefficiencies in the income tax code."[4] Tax-motivated insurance products appear somewhat benign because they seem rooted in the accepted tradition that taxes are a patriotic way to support the country but only a fool pays more than necessary. Viewed from a wider historical context, however, there is evidence to suggest that Belth's hypothesis regarding a long-term pattern of financial harm to insurance policy owners because of adverse governmental reactions to aggressive, and perhaps abusive, insurance marketing schemes is not entirely farfetched.

Irrespective of the motives ascribed to life insurance manufacturers and promoters, if the consequence of their historical behavior is to have engendered a tax-sensitivity within Courts, Congress and the Treasury Department that fosters a proclivity to scrutinize tax-motivated products, and to have created a negative bias towards such products, then acquisition of tax motivated insurance may generate unacceptably high levels of tax, audit and economic risk. Ironically, a successful process of designing, marketing and implementing tax motivated insurance products may contain the seeds of its own destruction.

An Historical Example: Marketing Goals and IRS Reactions

Consider, for example, the marketing of corporate-sponsored tax-deductible group life insurance. The history of tax-favored group insurance can be traced to 1920 (Law Opinion 1014) affirming that employer paid premiums on "group life insurance" are not

[3] Milevsky, M. & Gottesman, A., *Insurance Logic,* (Stoddard Publishing) Toronto, 2002. p. 26.

[4] *Supra,* p. 30.

reportable compensation to covered employees.[5] Whereas Law Opinion 1014 did not distinguish between term and permanent policies, insurance carriers began to market "group permanent" insurance as well as "group term" insurance contracts. By 1960, however, the Treasury stated that group permanent insurance triggers reportable income because increasing cash values as well as the right to receive continuing paid-up coverage provide substantial economic benefits. At this point, a pattern of insurance company marketing action followed by adverse IRS/Congressional reaction accelerates along two differing tracks.

Track one follows the group term insurance path. Basically, it sees the insurance industry promoting a variety of programs designed to provide minimum coverage to rank and file employees while, concurrently, insuring key executives and business owners with large amounts of tax-deductible term insurance coverage. The design and marketing strategy is known as "superimposing." The 1963 hearings before Congress on the Presidential recommendation to pass IRC §79, point out abusive actions by small businesses and professional corporations that purchase minimum coverage for one or two full time employees and superimpose jumbo face amounts on the lives of the principal(s). In the view of Congress, such actions constitute a government subsidized insurance purchase plan for the wealthy as opposed to a valid employee benefit plan. With the passage of IRC §79, the excludability from reportable income of group term insurance premiums was limited only to the first $50 thousand of coverage per insured employee. Beyond $50 thousand, a government table (Table I) measures the economic benefit of the term insurance coverage. Furthermore, as time passed, firms with fewer than 10 employees had to meet more restrictive conditions for premium deductibility. However, if a group term program met all applicable regulations and code provisions, the aggregate premium costs (even for coverage in excess of $50 thousand per employee) remained a deductible business expense. However, despite Congressional legislation to eliminate some nettlesome abuses, the games were about to begin. Although the ingenuity of the insurance industry's promotional and marketing efforts in the group term area continued (for example, some carriers set up multiple employer trusts in states with favorable regulatory provisions in an effort to bypass the federal tax regulations for under 10 employee firms), we turn to track two which follows the group permanent insurance path.

After 1960, the story of group permanent is one that sees the insurance industry aggressively marketing a variety of business insurance programs that have little or no economic advantages absent the presence of certain tax benefits. Basically, the superimposing strategies remain in play with the insurance carriers maintaining that a bona fide group plan can consist of either a single master group contract or multiple individual contracts. In this case, carriers design plans that superimpose individual whole life contracts covering only the "class" of executive or officer employees onto the group master contracts covering rank and file employees. Actuarial gamesmanship appears in a number of forms. For example, once an individual cash-value contract was "qualified" as group insurance, if the carrier allocates the bulk of premium costs to the term insurance component, several advantages follow:

1. The preponderance of the premium costs is a deductible business expense;
2. The insured's tax costs are capped by the Table I measure of economic benefit;
3. The increase in policy cash value represents a double tax benefit because economic value is transferred from the corporation to the insured without triggering tax liability and because the increase in policy cash value is not a reportable event.

Early attempts to qualify individual whole life policies as group insurance used allocations based on combinations of decreasing term and annuity products with little or no mortality component attributed to the annuities. As the IRS proceeded to issue a series of pronouncements regarding permissible and impermissible policy allocations, tax consequences of dividends, and other issues, a range of unresolved issues remained. Among these issues were the applicability of Table I rates to group permanent coverage and the applicability of superimposition of group permanent programs within the marketplace of firms with fewer than 10 employees. If a president of a firm with fewer than 10 employees superimposed a permanent cash-value insurance contract with an aggressive actuarial allocation, the

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[5] The history of employer-sponsored group insurance draws on the following *CLU Journal* articles: Roberts, J.E., "Section 79—An Update," (April, 1975), pp. 8-14; Solomon, M. I. & Silberberg, P., "Group Permanent: Innovative Approaches for Business Insurance and Estate Planning," (July, 1975), pp. 34-44; Swirnoff, M.A. "The Effect Of The Section 2042 Final Regulations On Group Permanent and Split Dollar Insurance Arrangements," (July, 1975), pp. 50-58; Huthoefer, G. E., "Section 79 Group Ordinary Problems Still Remain," (April, 1976), pp. 10-18; Roberts, J.E. & Martin, R. T., "Section 79—The New Regulations," (October, 1979), pp. 24-33; Roberts, J.E., "Retired Lives Reserve," (January, 1978), pp. 31-37; and, Shechtman, R. G., "Retired Lives Reserve: The Product," (October, 1980), pp. 20-26.

illustrated economic benefits, however attractive, might trigger substantial future tax penalties.

Legal gamesmanship did not take a back seat to actuarial gamesmanship. Informed commentators became increasingly alarmed over the possibility of adverse governmental reaction to aggressive marketing programs that focused on tax benefits. The opening paragraph of one CLU Journal article typifies the admonitory tone:

> "In reviewing the many articles that have appeared in the CLU Journal and other periodicals over the last few years concerning group ordinary life insurance, it is striking to note the contrast between the caution of the authors and the relative lack of caution with which the product is marketed."[6]

The magnitude of tax benefits is largely a function of the allocation of insurance policy components between mortality costs and cash value credits. Allocations with little or no economic reality turn cash value increases into business tax deductions. Furthermore, several authors condemn a perceived misuse of private letter rulings with at least one suggesting that insurance carriers provided limited and biased data to the IRS on behalf of selected clients (e.g., allocations between term and permanent for a firm with a young employee population) to receive a favorable ruling. The carrier would then initiate a broad-scope marketing campaign based on an "approved product."

On May 14, 1979, the IRS issued final regulations regarding the tax treatment of group permanent insurance. Under the new regulations, at least 10 employees (working for a single employer) must receive life insurance coverage for an insurance program to qualify as group insurance. The allocation between group term and group permanent insurance costs must be in writing (i.e., benefits must be separately stated within the policy) and the allocation must follow reasonable formulas. The cost of permanent insurance includable in a covered employee's reportable income is calculated according to a formidable formula that determines net single premiums based on specified mortality and interest factors. The 1979 regulations eliminate the tax advantages of group permanent policies. Limited grandfathering provisions applied to policies in effect on November 4, 1976. Not surprisingly, within a short time, the group permanent product, which promised tax-advantaged wealth transfers from the corporation to the shareholder, disappeared from the marketplace.

The IRS Imposes the Death Penalty: Retired Lives Reserve

The story of Section 79 insurance does not end in 1979, however. Certain insurance industry practices (policy allocations without substance, "cherry-picked" private letter rulings, speculative interpretations of revenue service rulings, etc.) put Congress and the IRS into a defensive position that ultimately forced them to levy the death penalty for one of the most popular business insurance programs: Retired Lives Reserve. A Retired Lives Reserve (RLR) is a fund established to provide continued group term life insurance coverage for retired employees. The reserve is pre-funded over the employee's working life. Employer contributions, according to the insurance marketers, would be tax-deductible business expenses (under IRC §162(a) provided that the reserve is funded on a level actuarially determined basis); earnings within the fund would accumulate tax free (under employee benefit plan rules if held in an exempt trust or if held in life insurance or annuity contracts: IRC §101(a)); and employer contributions for coverage under $50 thousand would not be reportable income to covered employees (under IRC §79). Most carriers offering a RLR product structured the program as a deposit administration contract in which the reserve had no associated mortality costs. Additionally, when the employee retires, all tax liability would disappear under the provisions of IRC §79(b)(1) which specifies that retired employees do not have to include employer payments for group insurance coverage in reportable income.

RLR was, in many respects, the ultimate in tax-leveraged insurance products. One CLU Journal article compared the after-tax employee cost (from ages 50 through 75) for $100 thousand permanent insurance coverage under four purchase methods:[7]

- Split Dollar: $36,474.50
- Life Paid-Up at 65: $34,425.00
- Group Permanent: $22,359.50
- Retired Lives Reserve: $5,115.00

In 1983 the Service, in a Technical Advice Memorandum said that RLR funds used for premium payments on insurance for retired employees represent a non-forfeitable right by the employee in the fund. The value of this right must be included in the employee's income in the year of his or her retirement. Additionally, the IRS announced that the RLR programs were under "extensive study" and that no further rulings would be issued.

In 1984, new regulations under the Deficit Reduction Act stated that a plan providing postretirement life insurance or medical benefits must meet the nondis-

[6] Huthoefer, *Supra* p. 10

[7] Roberts, J.E. *Supra* (1978), p. 34.

crimination requirements applicable to Welfare Benefit funds. These regulations restrict discrimination in favor of highly compensated employees and provide that the employer may be subject to an excise tax equal to 100% of the postretirement life insurance benefit provided to employees under a discriminatory plan. Additionally, postretirement benefits with respect to key employees require separate accounts and funding for such benefits must be paid only from the separate account. The Conference Committee Report to the Deficit Reduction Act provides that plans offering insurance benefits exclusively for retirees are considered to be deferred compensation. The effect of this ruling is to limit the deductibility of employer contributions to the amount includable in the employee's income (IRC §404(a)(5)). The new regulations spelled the demise of RLR and employers were left with "hot potatoes" that required, in some cases, administratively costly solutions such as establishment of Voluntary Employee's Beneficial Association (VEBA) Trusts. Amounts allocated to "key employee" separate account were treated as contributions to employer-sponsored pension plans with the result that RLR contributions had adverse consequences on eligibility for retirement savings benefits. Discriminatory plans were subject to a 100% excise tax.

Marketing Strategies: Stretching Tax Benefits Beyond Public Policy Bounds

The insurance industry has come to rely on purchases of tax-motivated insurance plans marketed as tax-deductible pension insurance, non-qualified deferred compensation, split dollar insurance, and a variety of other methods that promise tax benefits either to employers, employees or both.[8] In many cases, the economics of the purchase make sense only in the presence of tax benefits. Furthermore, if such benefits prove to be mere chimeras, the economic consequences of the transaction may be catastrophic. The history of corporate-sponsored group insurance exhibits a pattern of marketing actions followed by Congressional and Revenue Service reactions resulting in financial jeopardy only for purchasers of the insurance programs. It is significant that this pattern is not limited to employer-sponsored plans. An equally rich set of examples can be drawn from a history of the marketing of tax-favored individual insurance purchases. There is a clear path from the marketing, in the 1950s, of single-pay insurance purchased with borrowed funds (tax favored build up of inside cash values combined with deductibility of interest for borrowed funds); to limited pay insurance purchased with borrowed funds; to non-systematic borrowings from annual premium insurance policies under minimum deposit plans, to zero-pay minimum deposit (marketed, by some companies, under the heading "Government Pay All"[9]), to the final Congressional disallowance of interest deductions for non-qualifying personal debt. Despite significant legal questions regarding the validity of interest deductions for loans secured merely to pay currently due interest on outstanding debt obligations, the insurance industry continued to market tax motivated insurance purchase plans to individuals. Many consumers were left with highly leveraged insurance contracts which, following the Tax Reform Act of 1986, became too expensive to continue. Sadly, consumers discovered that policy surrenders or lapses generated fully taxable income if policy debt exceeded their tax basis. Insurance agents, encouraged by home offices that provided them with computer-generated illustrations, sold tax benefits (deductibility of interest) but failed to provide adequate information about potential tax liabilities. Common to many tax arbitrage strategies is the attempt to extend the "tax-shield" of annuities and insurance beyond their customary bounds. Equally common, is the final result, which finds an unfavorable counter response by the courts, IRS or Congress.[10]

Current Product Marketing: Policy Benefits vs. Audit, Tax and Economic Risks

The insurance industry's ongoing reliance on tax-motivated purchases continues to fuel current market-

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[8] The insurance industry has also been the subject of widespread litigation for alleged deceptive marketing practices in the marketing of insurance to individuals. Thousands of policies were sold as IRA or 401(k) alternatives under the marketing names of "individual pensions" or "private pension plans." See, for example, Richard Duhaime v. John Hancock Mutual Life Ins. Co., U.S. District Court for the District of Massachusetts, Civil Action No. 96-10706-GAO.

[9] Jenkins, G.E., "Zero Pay Minimum Deposit Plans: The Interest Payment Question," *CLU Journal* (January, 1983), p. 60. For an interesting description of a modern life insurance marketing campaign suggesting that wealth can be transferred in a manner that avoids both gift and estate tax liabilities, see "IRS Loophole Allows Wealthy to Avoid Taxes" *New York Times* (Sunday July 28, 2002). The marketing campaign, although pitched to wealthy individuals, is based, in large measure, on a 1996 private letter ruling regarding the economics of split-dollar funding of life insurance policies.

[10] One of the more creative marketing efforts in the 1970s was Wrap Annuities. The program promised owners of bank and S&L Certificates of Deposit that they could wrap their CDs in an annuity with the result that interest would no longer be reportable when credited. This program was short lived.

ing programs such as informal funding of non-qualified deferred compensation programs through corporate-owned life insurance and Welfare Benefit Trust (WBT) insurance programs. Responses to aggressively designed and implemented plans are predictable. The IRS, for example, announced that corporations maintaining a Welfare Benefit Trust (under IRC §419A(f)(6)) must register the plans according to the disclosure requirements for corporate tax shelters. The IRS has seen fit to litigate a number of WBT cases with mixed success. Despite a host of unresolved issues (DOL position on funding benefits through cash-value insurance, measurement of the economic value of pre-retirement death benefits, etc.),[11] some vendors continue to promote their programs.

The Revenue Service's attacks on certain COLI programs are based, in part, on misallocations of mortality, interest, and expense components within policies with the result that the transactions are devoid of economic substance and have no business purpose beyond the generation of corporate tax deductions. This is the same battle that the insurance industry fought and lost in the 1970s in the Section 79 group permanent arena. In COLI, actuarial (mis)allocations transmute non-deductible corporate premiums into deductible interest expense.

Professional advisors have an obligation (in some cases a fiduciary duty) to help clients structure economic transactions so that they do not incur unnecessary tax liabilities. This general principle is sometimes twisted to imply that advisors have an obligation to help clients generate maximum current tax deductions. Although these objectives may sound similar, they are, in fact, very different. Given the history of catastrophes that have befallen purchasers of many tax-motivated life insurance programs, it is clear that advisors must carefully weigh the merits of a current deduction against the liabilities of increased audit and tax risk. A reasonable observer can conclude that the risks for buyers of tax-motivated insurance have increased substantially. If anything, the hair-raising complexities of certain insurance proposals have increased to the point where the promoter either stretches the insurance contract's tax favored status beyond reasonable "public policy" bounds, or tortures compensation agreements and qualified plan structures into shapes that belie their intended morphology. Just as Congress "settled" certain issues surrounding annuities by declaring that the inside cash value accumulation was taxable to "non-natural" owners; it is not too difficult to envision a similar legislative settlement of issues surrounding tax-motivated life insurance policies owned by trusts, corporations and other taxable "non-natural" persons. The collapse of the real estate tax-shelter industry under the pressure of revised passive loss deduction regulations created a multitude of angry limited partners (despite the protestation of many vendors that the real estate lobby was far too strong to let such a thing happen). Recent proposals to reevaluate some of the basic tax characteristics of cash-value life insurance in light of the phase out of estate taxes and in light of a desire to lower tax rates while maintaining revenue neutrality are troublesome developments for buyers of tax-motivated life insurance plans.[12] This projected tax-law trajectory is a possible outcome of the historical patterns suggested by Belth, and it forms the basis for the hypothesis that successful marketing of tax advantaged insurance programs sows the seeds of their own destruction. No prediction is implied; only a reminder that expected benefits should always be risk adjusted.

Conclusion: Legal Opinions and Trustee Prudence

Both lawyers charged with providing legal opinions regarding insurance plans and fiduciaries charged with prudent management of life insurance assets operate in a challenging and uncertain environment. A few moments reflection on the liability exposure for a commercial trustee of an irrevocable life insurance trust where the asset to be managed is a bundle of rights derived from a split dollar agreement (that governs the asset in a manner that parallels, in some respects, the trust instrument itself) between the trust and a sub-trust of a qualified retirement plan, wherein successful plan funding is a function of the presence or absence of promised tax benefits or is a function of whether the IRS will overlook a policy rollout program dependent on "springing cash values," may be sufficient to send vice-presidents of bank trust departments into early retirement. There may be a case for recommending that both legal counsel and fiduciaries seek tax indemnification letters from vendors of tax-motivated insurance programs as a condition either of prod-

[11] Kehoe, D.M., "419A: A Legislative Odyssey," *Journal of Financial Service Professionals* (March, 2002), pp. 56-61; and McFadden, J.J., & Leimberg, S. R., "Welfare Benefit (Section 419A(f)(6)) Plans: What You Need to Know," *Journal of Financial Service Professionals* (November, 2000), pp. 72-79.

[12] Life insurance cash value increases are, in fact, currently subject to taxation if a corporation subject to the alternative minimum tax owns the policy.

uct purchase or retention.[13] Additionally, trustees of ILITs and certain employee benefit programs should examine the degree to which the economic viability of assets under management depends on the persistence of current tax law or the viability of ongoing deductions and exemptions. Assets that are wrapped in tax-arbitrage plans such as split dollar agreements or that have poor economic viability absent certain future projected tax benefits may not be suitable investments for the trust portfolio.[14]

[13] This is a much different strategy for client counseling and liability mitigation than the parade of marketing gimmicks and "money-back guarantees" offered by certain insurance companies. See, for example, Leimberg S.R., & Gibbons, A.E., "Life Insurance: Decision-Making After September 11th and EGTRRA," *Estate Planning* (January, 2002), pp. 36-41.

[14] On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act ("The Corporate and Auditing Accountability, Responsibility and Transparency Act of 2002"). The Act's prohibitions against corporate loans to executives or directors puts into question the ongoing viability of many corporate sponsored split dollar life insurance programs. Insurance agents often recommend a transfer of employee rights in policies financed under split dollar plans to irrevocable life insurance trusts. The Service, on July 23, 2003, issued two rulings (Rev. Rul 2003-91 and Rev. Rul 2003-92) that restrict or eliminate many tax benefits of "private placement," "hedge fund," "wrap account," and "offshore" variable life insurance programs.