By **Al W. King III** & **Pierce McDowell III**

Powerful Private Placement Life Insurance Strategies With Trusts

Improved design, pricing and servicing leads to increased popularity

Estate-planning professionals should be aware that there are many creative planning opportunities for the use of private placement life insurance (PPLI)[1] with trusts. PPLIs are dramatically increasing in popularity as a result of their improved design, pricing and servicing aspects.

What is PPLI?

PPLI is essentially a flexible premium variable universal life (VUL) insurance transaction that occurs within a private placement offering. The private placement component adds extensive flexibility to the VUL product pricing and asset management offerings. Because PPLI is sold through a private placement memorandum, every situation can be individually negotiated and custom designed for the client. PPLI can be for single life or survivorship and is offered only to an accredited investor.[2] PPLI has both a death benefit and a cash value (that is, investment account) and is generally designed to maximize cash value and minimize death benefits. Consequently, PPLI is usually designed as a non-modified endowment contract (non-MEC) policy, with four to five premiums versus a single premium policy (that is, a MEC). In this way, cash values can be accessed tax-free during an insured's lifetime.[3] The PPLI cash value is generally invested among a variety of available registered and non-registered fund options (that is, hedge funds, private equity (PE) and other alternative investments).

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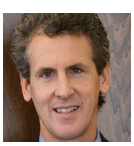

Investment Options

Generally, investment managers of the client's choice, even though not on the insurance companies' previously approved PPLI investment manager list, can be added and/or substituted in the future.[4] If the client exercises too much control over the investments, however, then he'll be treated as owner, and tax benefits will be jeopardized. That being said, the client is generally free to choose the investment managers he desires, but can't have control over specific investment elections and shouldn't have a pre-arranged plan with the investment advisor or manager.[5] The investments for the cash value must also meet statutory diversification rules, which generally require at least five funds.[6] Consequently, an enormous amount of flexibility exists regarding the investment options for the PPLI cash value, and all is done within the insurance rules so that the investment gains within these cash value accounts aren't subject to federal or state income taxes.

PPLI Costs

Assuming a reasonable lifetime investment return, the costs of PPLI will generally be much less than the taxes that would have otherwise been owed. PPLI insurance costs generally average about 1 percent of the cash value of the policy.[7] This amount doesn't include the investment manager fees for investing the cash values, which would generally be the same whether within a PPLI wrapper or not. Note that having a PPLI policy owned in a trust or in a limited liability company (LLC) can significantly reduce the PPLI policy cost (see below for further discussion).

Cash Values

The PPLI cash values are as liquid as its underlying investments, but if a trust owns the PPLI policy in certain trust situs jurisdictions, in-kind distributions

of both cash value and death benefits will be allowed. For example, if the underlying investments are hedge funds and/or PE in lock-up periods, they won't need to be liquidated.[8] Further, the cash values are in separate accounts and, therefore, aren't subject to the general creditors of the life insurance companies.[9]

Increased Popularity

Previously, PPLI hadn't been as appealing due to: lack of Internal Revenue Service guidance; limited investment alternatives; and wide-ranging expense charges. Things have radically improved with recent IRS guidance,[10] combined with the turn-key cash value options now offered by the insurance carriers[11] and the policy creditor protection. Hence, there's now less complexity and cost and more asset protection associated with PPLI.

The use of modern trusts by the wealthy (that is, the top 10 percent) has increased dramatically from 1995 to the present day.[12] In 1995, only 12.5 percent of all gifts were in irrevocable trusts compared to an average of 40 percent today. Additionally, the use of life insurance by the wealthy has increased significantly. Insurance now makes up more than 20 percent of the wealthy's overall wealth.[13] This increase in insurance over time is due to the combination of modern trust structures and the development of domestic PPLI insurance.

State Income Tax Planning

PPLI can be very beneficial to clients in high income tax jurisdictions because:

1) They may have a trust sitused and taxed in a high income tax state;
2) They may be a beneficiary with residence in a high income tax state and, thus, taxed accordingly when receiving trust distributions from a trust sitused in their resident state and/or another state, whether or not subject to trust income taxes; and/or
3) The trust established by a grantor/settlor may be sitused in a no income tax state, but nevertheless, still subject to income taxes in the client's resident state based on unique state trust income tax laws.

The high income tax states are California, Connecticut, Hawaii, Massachusetts, New Jersey and New York (see "High Income Tax Trust Jurisdictions," p. 44).[14] If investments within trusts in these states are wrapped within a PPLI policy, the income and capital gains they generate generally aren't subject to state and/or federal income taxes. Additionally, if a beneficiary with residence in a high income tax state receives a distribution from a trust, whether or not the trust is sitused in a no income tax state (that is, Alaska, Delaware, New Hampshire, Nevada, South Dakota and Wyoming)[15] or in a high income tax state, the distribution will generally be taxed based on the beneficiary's residence for both federal and state tax purposes. One key exception to this rule is if the distribution is from a PPLI policy owned by a trust. In that case, generally both federal and state taxes would be saved when the beneficiary receives the trust distribution.

Some states have adopted unique trust taxation statutes. For example, New York recently enacted an accumulated earnings tax, effective 2014,[16] on non-grantor trusts sitused in no income tax states. The accumulated earnings tax results in the payment of taxes on undistributed income over the life of the trust once it's distributed from the trust. It appears as though capital gains may be exempt from the New York accumulated earnings tax.[17] Note that if the trust investments are wrapped within a PPLI policy, they wouldn't be subject to the accumulated earnings taxes either on income accumulation or distributions.

Additionally, many jurisdictions, such as

The promissory note sale is a great option with a grantor trust even if the client has used his $5.45 million gift and GST tax exemptions.

Connecticut[18] and Washington, D.C.,[19] tax trusts if the grantor/settlor was a resident of the jurisdiction when the trust was established. This tax is imposed even though the grantor/settlor is no longer a resident of that jurisdiction, there's no trust property located in that jurisdiction, the beneficiaries aren't residents of that jurisdiction and there are no trustees in that jurisdiction. PPLI could also alleviate the burden of the taxation on trust income and capital gains in these jurisdictions. Generally, even if Connecticut or Washington, D.C. trusts created by a grantor/settlor in those jurisdictions change situs to no income tax jurisdictions, the income taxes on trust income and capital gains won't be avoided. Consequently, PPLI insurance can also help avoid Connecticut and Washington, D.C. taxes whether the trust remains sitused in those jurisdictions or changes situs to a no income tax jurisdiction. Pennsylvania[20] and Illinois[21] have similar statutes to Connecticut and Washington, D.C., but recent cases with fact patterns relatively similar to the cases in those jurisdictions have resulted in victories for the taxpayers regarding the trust taxation of income and capital gains if the trust changes situs to a no income tax jurisdiction; nonetheless, PPLI would still be beneficial to reduce federal taxes on trust income and capital gains, as well as both state and federal taxes on trust distributions. PPLI would also be beneficial in many other jurisdictions if the situs of the trust is moved from a high income tax jurisdiction to a no income tax jurisdiction (for example, to Alaska, Delaware, New Hampshire, Nevada, South Dakota or Wyoming).[22]

Zero Tax Dynasty Trusts

In addition to changing the situs of a trust to a no income tax jurisdiction, many clients create dynasty trusts in states without state income taxes on trusts, prompting them to ask, "what about the federal taxes?" Again, PPLI is the answer to minimizing both the federal and state taxes on the income and capital gains on trust assets in the dynasty trusts. Additionally, as previously discussed, the trust distributions made from dynasty trusts sitused in no income tax states to beneficiaries in high income tax states can be both federal and state tax-free to beneficiaries if PPLI is used. Consequently, PPLI allows clients to create zero tax dynasty trusts:

- No federal income taxes (trust income/capital gains and distributions);

High Income Tax Trust Jurisdictions

Private placement life insurance can result in big savings

Arizona 4.54%	Illinois 3.75%	Minnesota 9.85%	Rhode Island 5.99%
California 13.30%	Iowa 8.98%	Missouri 6%	South Carolina 7%
Colorado 4.63%	Kansas 4.6%	New Jersey 8.97%	Tennessee 6% Dividends and Interest Only (Tennessee beneficiaries)
Connecticut 6.7%	Louisiana 6%	New York 8.82% New York City 3.876% Total 12.696%	Utah 5%
Georgia 6%	Maryland 5.75%	North Carolina 5.75%	Virginia 5.75%
Hawaii 11%	Massachusetts 5.15%	Ohio 5.33%	Washington, D.C. 8.95%
Idaho 7.4%	Michigan 4.25%	Oregon 9.90%	Wisconsin 7.65%

— Steven J. Oshins, "1st Annual Non-Grantor Trust State Income Tax Chart" (July 2015)

- No state income taxes (trust income/capital gains and distributions);
- No federal death taxes; and
- No state death taxes.

This zero tax dynasty trust is popular with both U.S. families and international families (for example, non-resident aliens (NRAs) with U.S. citizen children and/or grandchildren). U.S. family members each have $5.45 million gift and generation-skipping transfer (GST) tax exemptions, and an NRA has unlimited gift and GST tax exemptions for gifts into trusts.[23] PPLI can generally either be purchased on the life of the domestic grantor/settlor or possibly on the life of the NRA settlor/grantor. A U.S. situs trust generally provides enough of a nexus for an NRA to acquire domestic insurance from a U.S. insurance carrier. However, many U.S. insurance carriers may require that the NRA have ties to the United States in addition to the U.S. situs trust, such as U.S. real estate or other U.S. situs property. In addition to possibly acquiring the domestic insurance on the settlors/grantors' life, PPLI policies are also frequently purchased on the beneficiaries' lives at each generational level, providing powerful leverage so that these dynasty trusts become well-funded family banks for several generations or in perpetuity.

Defective Dynasty Trust and PNS

As a result of the increase in the gift and GST tax exemptions to $5.45 million each in 2016, the dynasty trust is one of many vehicles available to provide for the purchase of large insurance policies by families. Additionally, many clients are initially establishing grantor defective dynasty trusts using their $5.45 million exemptions and then implementing the promissory note sale (PNS) strategy[24] to further leverage the trusts via life insurance without any additional gift, estate and/or GST tax consequences. Consequently, the PNS is a great option with a grantor trust even if a client has used his $5.45 million gift and GST tax exemptions.

The PNS allows for very large insurance purchases based on an arbitrage with the promissory note interest and the trust investments.[25] For example, assume your clients, a married couple, first make a gift of $5.45 million in cash or other assets to a trust that's defective for income tax purposes, but not for estate tax purposes. There's no gift tax due because the $5.45 million gift is more than covered by their combined gift and GST tax exemptions (that is, $10.9 million). Additionally, the $5.45 million gift justifies up to a $49.05 million promissory note sale (that is, 9 x $5.45 million) based on the 90 percent/10 percent debt/equity rules of the Internal Revenue Code.[26] This sale could include a series of one or more notes. Assume that the promissory note is for a term of nine years, to be paid interest-only with a balloon payment at the end of the ninth year. The interest rate is 1.48 percent (the IRC Section 1274(d) federal midterm rate for March 2016). Also, assume that if $1 million is paid into a PPLI policy over five years, it will purchase approximately $23 million of PPLI death benefit, which will usually vary depending on the type of PPLI policy, age and underwriting.[27]

U.S. domestic insurance generally isn't considered a U.S. situs asset, and thus, is an exempt asset from both U.S. estate and possibly income taxes if purchased by an NRA.

At the beginning of the first year, the trust holds assets with a value to the clients of $54.5 million. This amount equals the initial gift to the trust of $5.45 million, plus the subsequent promissory note sale amount of $49.05 million (9 x $5.45 million). The example assumes that the trust assets produce a 3.17 percent annual cash flow and are non-discountable.[28] The 3.17 percent is multiplied by the entire $54.5 million held by the trust to compute the income earned by the trust in the first year, which is $1,727,650. At the end of each year, the trust must pay the clients' 1.48 percent of the initial fair market value of the promissory note, or $725,940. This is computed by multiplying 1.48 percent by $49.05 million, which is the difference between the $1,727,650 cash flow and the $725,940 promissory note interest payment, which equals $1,001,710 and inures to the benefit of the trust, gift and GST tax-free. This

arbitrage difference can then be used to purchase PPLI insurance by paying an annual PPLI policy premium of at least $1 million for five years without using any of the trust principal. Additionally, the interest paid to the clients on the promissory note of $725,940 is federal and state income tax-free, pursuant to Revenue Ruling 85-13. It's a tax-free transaction because the trust is a grantor trust and, therefore, it's viewed as if the grantors are paying interest to themselves. However, because it's a grantor trust, the grantors will be paying the federal and state income and capital gains taxes on the grantor trust.[29] Alternatively, if the initial contribution of $5.45 million to the grantor trust is fully invested in PPLI, then the grantors won't owe any federal or state income and capital gains taxes on the grantor trust. Additionally, the PPLI policy owned by the trust can generally be used for the 10 percent down payment to fund the PNS strategy in line with the debt/equity rules.

The United States is currently a non-participant in CRS, and hence, the normal CRS reporting may not be required on a PPLI policy acquired in the United States.

If a client dies before the promissory note term is up, the note is included in the client's estate, possibly at a discount.[30] Sometimes, PPLI insurance is purchased to fund the estate taxes owed on a note. Alternatively, term insurance might be purchased for the note term to pay estate taxes owed on the note at death. A self-canceling installment note (SCIN) could also be used, depending on the client's age, which wouldn't be included in the client's estate at death. Note: Take into account that the interest rate charged on the SCIN would need to be slightly higher than the PNS.[31]

BDITs

Another option is to use a beneficiary defective inheritor's trust (BDIT)[32] in combination with life insurance. Generally, a BDIT is designed to give the primary beneficiary control and beneficial rights somewhat similar to outright ownership, while providing favorable tax and asset protection advantages of a trust created by another party (usually the parent). Typically, the beneficiary is treated as the owner of the BDIT for income tax purpose, but not for estate, gift or GST tax purposes. For example, a parent would set up a BDIT for a child beneficiary as the primary beneficiary. The child is generally named as a co-trustee, and the trust would be income tax defective as to the child; further, the child would be liable for the income taxes on the BDIT, but the BDIT wouldn't be in either the parents' or child's estate.

The BDIT can also purchase a life insurance trust on the life of the beneficiary or the parent grantor. In this regard, the insured beneficiary could have access to the cash value of the PPLI policy income tax-free during his life, while avoiding estate tax on the proceeds when paid at death, if properly structured and administered. Also, the beneficiary would be able to save federal and state income and capital gains taxes on the BDIT if the trust was invested in PPLI insurance. Generally, a co-trustee and/or special trustee other than the insured beneficiary is used for all aspects of the purchase, administration and distributions associated with the PPLI policy owned by the BDIT, so that there aren't any estate tax inclusion issues. The BDIT is typically drafted to accommodate an insurance purchase.

GRAT Remainder

Further planning opportunities are available with PPLI at the end of a grantor retained annuity trust (GRAT) term.[33] For example, the GRAT remainder could be used to purchase PPLI insurance. This opportunity would be available whether the GRAT remainder stays in trust for the grantor's children, is distributed outright to the grantor's children or is sold to a dynasty trust. Purchasing PPLI in these scenarios with the GRAT remainder would result in additional federal and state income tax savings.

Self-Settled DAPTs

Single individuals in the United States are establishing self-settled domestic asset protection trusts (DAPTs)[34] prior to marriage and naming a floating spouse (that is, the spouse they're living with and married to at the time) so when they get married, the spouse can be automatically added as a trust beneficiary on a "floating"

basis, and in the unfortunate event they get separated and/or divorced, the spouse is automatically removed as a trust beneficiary.[35] Additionally, they can name unborn children as beneficiaries, as well as a charity[36] directly or indirectly through a donor advised fund and/or private foundation. Alternatively, they may just name unborn children and a charity as beneficiaries instead of naming a floating spouse. By establishing a self-settled trust, the client can also be a permissible discretionary beneficiary. Consequently, single clients can contribute wealth to the self-settled trust to pay premiums of PPLI policies purchased and owned by the trusts. Moreover, the client has the ability to receive future PPLI distributions during lifetime (for example, retirement) both federal and state tax-free from these self-settled trusts (that is, a DAPT and/or a tax-neutral DAPT). Additionally, because these trusts are established before marriage, they're generally divorce-proof, depending on the DAPT situs.[37]

Offshore vs. Domestic Policies

Both domestic and international clients may purchase offshore PPLI policies as an alternative to domestic PPLI. As a result of the evolution of domestic policies and statutes, many clients have elected to stay onshore for their purchase of PPLI. Previously, one reason for going offshore was the domestic premium tax, which was always around 200 basis points (bpts) or 2 percent; however, within the last two decades, several states have lowered their premium taxes significantly (for example, Alaska, 10 bpts; Illinois, 50 bpts; South Dakota, 8 bpts; and Wyoming, 75 bpts, making domestic PPLI very attractive.[38] (See "Offshore Versus Domestic," this page.)

If there are existing trusts in a state and a client wants to purchase PPLI in these trusts to take advantage of the lower premium tax in states such as Alaska, Illinois, South Dakota and Wyoming, a potential solution is for the client to form an LLC in one of those respective states with a resident co-managing member in that state. That resident co-managing member may then purchase PPLI within the LLC and allocate the LLC units to the out-of-state trusts, thereby using the state's low state premium with an existing out-of-state trust.

Another reason for previously going offshore was the ability to take loans from policy cash value and/or pay death benefits "in-kind." If there are alternative investments involved (for example, hedge funds and/or PE) in lock-up periods, payments from the policy could be made in-kind so that the lock-up periods could be maintained.[39] Also, DAPTs and their associated asset protection laws have evolved to a very powerful level in the United States, so that many clients prefer not to go offshore any longer. Additionally, purchasing an offshore policy isn't generally an easy task because an insured needs to:[40]

- travel to an offshore marketplace;
- undergo a physical examination offshore;
- complete required documents offshore;
- set up a non-U.S. entity to own the offshore contract; and
- take receipt of the policy offshore.

Also, domestic clients purchasing offshore insurance have Foreign Account Tax Compliance Act (FATCA) and other possible filing regulatory requirements (for example, Report of Foreign Bank and Financial Accounts),[41] which many prefer to avoid by purchasing a domestic PPLI policy.

Offshore Versus Domestic

Many clients have elected to stay in the United States as states have lowered their premium taxes

1. U.S. Insurance Company/ Offshore Operation (Internal Revenue Code Section 953(d))	• DAC tax • No premium tax • FBAR/FATCA
2. International Insurance Company (non–IRC Section 953(d))	• 1% federal excise tax • Have to travel to country (for example, physical exam, sign document) • FBAR/FATCA
3. U.S. Company	• DAC tax • State premium tax (for example, 8-10 basis points)

Key
FBAR: Report of Foreign Bank and Financial Accounts
FATCA: Foreign Account Tax Compliance Act
DAC: Deferred acquisition cost

— South Dakota Trust Company, LLC

NRAs and PPLI

U.S. domestic insurance generally isn't considered a U.S. situs asset, and thus, is exempt from both U.S. estate and possibly income taxes if purchased by an NRA.[42] Many NRAs own U.S. situs property (that is, real estate and/or U.S. securities), and they haven't transferred these U.S. situs assets to a trust to avoid U.S. estate taxes.[43] Consequently, NRAs are limited to a $60,000 estate tax exemption for U.S. situs assets,[44] and any U.S. situs assets above that amount will be subject to the burdensome U.S. estate taxes and possibly state death taxes. PPLI can generally be purchased to pay for these estate taxes. Additionally, NRAs are using PPLI with NRA dynasty trusts[45] and foreign grantor trusts with U.S. situs,[46] as well as for the protection of distributions to U.S. beneficiaries from foreign non-grantor trusts sitused offshore.[47]

Investment professionals need to be aware of PPLI as an option to provide a tax-free wrapper around their investment management.

Moreover, another potential benefit for an NRA acquiring PPLI in the United States may be the potential to lessen the burdensome reporting requirements of the Organization for Economic Co-operation and Development's emerging global standard for the automatic exchange of financial account information, also known as the "Common Reporting Standard" (CRS). Specifically, CRS is a set of global standards for the annual exchange of financial information between financial institutions and tax authorities of the jurisdictions where customers are residents for tax purposes. CRS was inspired by the financial reporting requirements the United States established in FATCA and currently has 98 jurisdictions committed.[48] However, the United States is currently a non-participant in CRS, and hence, the normal CRS reporting may not be required on a PPLI policy acquired in the United States. However, if the NRA acquired PPLI in a CRS-participating nation, then the PPLI would likely be required to be reported.[49] It should further be noted that newly formed PPLI products could potentially be developed in response to the CRS.[50]

Asset Protection

As previously mentioned, PPLI policies are protected from creditors of the insurance company because they're segregated into separate accounts. In addition to this protection, clients also desire that their PPLI policies be protected from their own creditors. Many states (for example, Florida, New York and Texas)[51] have statutes for residents that protect both the cash value and death benefit of PPLI policies, which adds another key advantage to PPLI. Whether or not clients are resident of one of these insurance asset protection exemption states, they may want to use a self-settled and/or third-party trust and/or LLC wrapper. The trust and/or LLC wrapper asset protects the PPLI policies, as well as provides many other key benefits, such as lower state premium taxes and/or in-kind cash value on death benefit distribution, thus preventing lock-up issues associated with underlying alternative investments.[52]

Growth Projected

The combination of all of the favorable PPLI product development over the years, combined with the creative uses that have arisen for PPLI insurance, have resulted in large amounts being placed,[53] with phenomenal growth projected in 2016 and beyond. Estate planners who aren't insurance professionals need to be aware of PPLI policies and their many uses for a client's estate, trust and financial planning. CPAs also need to be cognizant of PPLI insurance to maximize their clients' tax savings. Additionally, investment professionals need to be aware of PPLI as an option to provide a tax-free wrapper around their investment management. If you don't buy PPLI insurance, you won't have PPLI insurance!

Endnotes

1. Internal Revenue Code Section 7702; *See* Kirk Loury, *The PPLI Solution: Delivering Wealth Accumulation, Tax Efficiency, and Asset Protection Through Private Placement Life Insurance* (2005); *see also* Lynnley Browning, "Tax-Free Life Insurance: An Untapped Investment for the Affluent," *The New York Times* (Feb. 9, 2011).
2. Investors in private placement life insurance (PPLI) must be "accredited investors" who are "qualified purchasers." The accredited investor rules state that natural persons must have a net worth of over $1 million, not including the

value of the investor's permanent residence, or an annual income over $200,000 in the last two years. Generally, individuals who have at least $5 million in investment assets are considered qualified purchasers. *See* 115 U.S.C. Section 77(b)(15); 17 CFR Section 230.501(a); 15 U.S.C. Section 80a-2(a)(51).

3. IRC Section 7702A. Modified endowment contract (MEC) policies are subject to additional taxation of withdrawals and loans from policy cash value usually based on premium funding levels and timing of premium payouts. A non-MEC policy allows for tax-free withdrawals up to basis and tax-free loans against the balance of the account. Withdrawals in excess of basis are taxed as ordinary income, though a client can access the policy's cash value without triggering a tax liability by taking a loan against the policy. Contrast with a MEC, in which accumulation within is tax-deferred, but withdrawals and loans are taxed as ordinary income first, and recovery of basis second. Consequently, the initial premium can only be withdrawn tax-free after all of the accumulated gain has been withdrawn and taxed, so the policy owner can't access the cash value in a tax-efficient manner. *See also* Loury, *supra* note 1, at p. 7.
4. *See* Loury, *supra* note 1, at pp. 231-256.
5. *Ibid.,* at pp. 193-196; Internal Revenue Service Revenue Notice 2003-92; *see also Webber v. Commissioner*, 144 T.C. no. 17.
6. IRC Section 817(h); *see supra* note 1, at pp. 193-198.
7. *See* Loury, *supra* note 1, at p. 9.
8. S.D. Codified Laws Sections 58-15-17, -2 and -26.2, -33.
9. *See* Loury, *supra* note 1, at p. 25.
10. *See* IRC Section 7702; IRS Revenue Notice 2003-92; IRC Section 817(h).
11. Generally, insurance dedicated funds (IDFs) are exclusively offered to insurance companies and exclusively capitalized by multiple insurers' life insurance or annuity policyholders, and separate accounts are IDFs only available to a specific policy owner's account and owned by the insurance company.
12. Al W. King III, "Unique and Creative Uses of Modern Trusts Involving Investments and Insurance," MDRT Annual Meeting 2015, New Orleans (June 16, 2015); G. William Domhoff, "Wealth, Income, and Power," *www2.ucsc.edu/whorulesamerica/power/wealth.htm*; *see also* "Planning Opportunities Using Domestic Trust Jurisdictions," Estate Planning Council of Westchester (Dec. 2, 2015). *See also* E.N. Wolff, *The Asset Price Meltdown and the Wealth of the Middle Class* (2012).
13. *Ibid.*
14. *See* Wolters Kluwer CCH, *2016 State Tax Handbook* (2015); *see* Steven J. Oshins, "1st Annual Non-Grantor Trust State Income Tax Chart" (July 2015), *www.oshins.com/images/State_Income_Tax_Chart.pdf.*
15. *Ibid.; See also* Daniel G. Worthington and Mark Merric, "Which Situs is Best in 2016?" *Trusts & Estates* (January 2016), at p. 61.
16. New York State 2014-2015 Executive Budget, effective April 1, 2014.
17. *See* Jonathan J. Rikoon, "New York's 2014 Trust Income Tax Changes," *Tax Stringer*, Vol. 5 No. 9 (September 2014); *see also* Kevin Matz, "Introducing the New York Throwback Tax" (Dec. 10, 2015), *www.kmatzlaw.com/wp/wp-content/uploads/2014/12/Introducing-the-New-York-Throwback-Tax.pdf.*
18. *Chase Manhattan Bank v. Gavin*, 733 A.2d 782 (Conn. 1999).
19. *District of Columbia v. Chase Manhattan Bank*, 689 A.2d 539 (D.C. 1997).
20. *McNeil v. Commonwealth of Pennsylvania*, 67 A.3d 185 (Pa. Commw. Ct. 2013).
21. *Linn v. Department of Revenue*, 2013 Ill. App. (4th) 121055 (Dec. 18, 2013).
22. *See supra* note 15.
23. *See* G. Warren Whitaker, "U.S. Tax Planning for Non-U.S. Persons and Trusts: An Introductory Outline," Day Pitney, LLP (2016 Edition); *see* IRC Section 2501(a)(3), IRC Section 2511(b) and Treasury Regulations Section 26.2663-2.
24. Using a promissory note sale to a defective grantor trust to acquire life insurance and avoid gift, estate or generation-skipping transfer tax exemption consequences. *See also* King, *supra* note 12.
25. Al W. King III, Pierce H. McDowell III and Steven J. Oshins, "Sale to a Defective Trust: A Life Insurance Technique?" *Trusts & Estates* (April 1998).
26. Al W. King III and Pierce H. McDowell III, "State Premium Tax Planning?" *Trusts & Estates* (June 2011), at p. 25.
27. A similar death benefit would likely result in $1.25 million paid over four years. *See* Jonathan M. Forster, Michael B. Liebeskind and Jennifer M. Smith, "Hot Topic in Insurance Planning: Private Placement Insurance" *The AALU Quarterly* (Fall 2011).
28. Note the promissory note sale strategy can be further leveraged using discountable assets (for example, closely held stock, limited partnerships, S corporation stock, limited liability companies) versus investment assets, so as to receive a discount on the value of such assets (for example, 30 percent) because they're generally deemed minority interests and unmarketable.
29. The grantor trust requires the grantor to pay income on the trust, but the trust can have a power allowing the trustee to reimburse the grantor on a discretionary basis for income taxes paid by the grantor on behalf of the grantor trust; *See* Revenue Ruling 2004-64.
30. *See supra* note 26.
31. *See* Marissa Dungey and James Dougherty, "IRS SCINs a Cat?" *http://wealthmanagement.com/estate-planning/irs-scins-cat* (Aug. 5, 2013).
32. Richard A. Oshins, Lawrence Brody and Katarinna McBride, "The BDIT: A Powerful Wealth Planning Strategy When Properly Designed and Implemented," *LISI Estate Planning Newsletter* #1824 (June 22, 2011), *www.leimbergservices.com.*
33. *See supra* note 25.
34. King, *supra* note 12.
35. Self-settled trusts are generally when the settlor has the ability to name himself as a trust beneficiary of a discretionary trust along with other permissible beneficiaries, while still providing asset protection from settlor's creditors. The states with self-settled trusts include Alaska, Colorado, Delaware, Hawaii, Mississippi, Missouri, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Virginia and Wyoming. *See also* Al W. King III "Defend Against Attacks on DAPTs?" *Trusts & Estates* (October 2014), at p. 25.
36. Al W. King III, "Tips From The Pros: Charitable Giving With Non-Charitable Trusts?" *Trusts & Estates* (June 2015), at p. 13.
37. For example, Alaska, Nevada and South Dakota; *see* American College of Trusts and Estates Counsel (ACTEC), "ACTEC Comparison of the Domestic

Asset Protection Trust Statutes" (September 2015), *www.actec.org/assets/1/6/Shaftel-Comparison-of-the-Domestic-Asset-Protection-Trust-Statutes.pdf*.

38. *See supra* note 26.
39. *See* Loury, *supra* note 1, at p. 290.
40. *Ibid.*, at p. 294.
41. Report of Foreign Bank and Financial Accounts (FBAR) requiring U.S. persons to file an FBAR if: (1) the U.S. person had a financial interest in or signature authority over at least one financial account located outside of the United States; and (2) the aggregate value of all foreign financial accounts exceeded $10,000 at any time during the calendar year reported. The Foreign Account Tax Compliance Act (FATCA) provisions were included in the Hire Act, which was signed into law on March 18, 2010, requiring U.S. taxpayers who own certain foreign financial accounts or other offshore assets to disclose if the accounts exceed $50,000 (including offshore insurance) and requiring foreign financial institutions to report information to the IRS on U.S. account holders.
42 *See supra* note 23; *See* Treas. Regs. Section 20.2105-1 (g).
43. *See supra* note 23.
44. *Ibid.*
45. Al W. King III, "Popular Domestic Trust Strategies for International and Cross Border Families," Third Annual Institute on Tax, Estate Planning and the Economy (Jan. 30, 2014).
46. *Ibid.*
47. Amy P. Jetel, "Foreign Non-Grantor Trusts: Taxation, Planning, and Reporting," Society of Trust and Estate Practitioners (March 21, 2014); *see also* Leigh-Alexandra Basha, "Life Insurance and the International Client: A Quagmire Requiring Targeted Solutions," Washington, D.C. Estate Planning Council Meeting (Nov. 17, 2015).
48. Global Forum on Transparency and Exchange of Information for Tax Purposes, "AEOI: Status of Commitments,"(Dec. 11, 2015), *www.oecd.org/tax/transparency/AEOI-commitments.pdf*.
49. Note that the reporting required by an Intergovernmental Agreement, FATCA and FBAR may still apply.
50. "Leaks on Tap," *The Economist* (Feb. 28, 2015).
51. For example, Florida, Kentucky, Hawaii, Michigan, New Mexico, New York, Oklahoma, Texas and Wyoming. *See* Duggan & Bertsch, "Creditor protection Laws for LI and Annuities Chart," Asset Protection Society, *www.assetprotectionsociety.org/wp-content/uploads/2013/07/50-State-Creditor-Exempt-Asset-Chart-2013.pdf*.
52. Al W. King III, "Defend Against Attacks on DAPTs?" *Trusts & Estates* (October 2014), at p. 25.
53. *See* Loury, *supra* note 1, at p. 19; *See also* Lynnley Browning, "Tax-Free Life Insurance: An Untapped Investment for the Affluent," *The New York Times* (Feb. 9, 2011).

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CONTACT INFORMATION

If you have any questions or would like any additional information, please do not hesitate to call or e-mail us at the numbers and addresses listed below. We also invite you to visit our website at sdtrustco.com.

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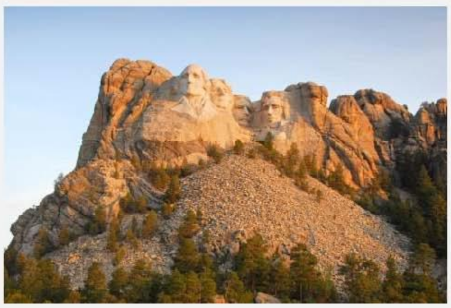

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