

# Utilizing Private Split Dollar in Estate Planning

**Michael F. Amoia, JD, CFP, CLU, ChFC**

**Kristen E. Simmons, JD**

**Robert C. Slane, AEP, CLU**

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In today's ever-changing economy and tax environment, one thing is fairly certain: the estate tax is here to stay. Several bills have been introduced in Congress proposing a broad range of federal estate tax rates and exemption levels.<sup>1</sup> For the estate planner, this means that estate tax planning is alive and well and must be addressed with clients. However, with the slow economy, it is particularly difficult to get clients to focus on estate tax savings strategies because they are generally more concerned with the status of their existing assets and less concerned with reducing their exposure to estate taxes. Use of private split dollar to fund life insurance on the client's life can provide a great alternative to the client that would otherwise be wary of engaging in estate tax planning. By combining a private split dollar arrangement with a grantor retained annuity trust or installment note sale to an intentionally defective grantor trust, the client can obtain life insurance outside of his estate and later be repaid for the premiums.

Life insurance is a fundamental tool in the estate planner's toolbox. It is a unique asset in that it provides cash liquidity (death benefit) at an unknown point in the future when it is needed most (death). The cost of a policy (in the form of premiums) is usually spread out over a number of years. With the latest designs in guaranteed death benefits and guaranteed premiums, a policy can be acquired for a substantial discount from the ultimate death benefit. A commonly used description for funding the estate tax with life insurance is "buying whole dollars for pennies." If the policy is owned outside of the insured's estate, i.e. in an irrevocable trust, the death benefit will generally be estate and income tax free.

The challenges that estate planners face when proposing life insurance for estate taxes are twofold. The first challenge is convincing the client to part with the dollars required to pay premiums. Because of significant declines in the personal net worth of virtually everyone over the last 18 months, clients have underlying concerns that they may not have enough net worth to maintain their lifestyle, their independence and their overall financial security. In the client's mind, a transfer of dollars for premiums further reduces the client's own net worth and heightens the client's financial insecurity.

The second challenge facing estate planners is how to get the dollars needed for the life insurance premiums outside the client's estate in the most transfer tax efficient manner possible. While clients could utilize their \$1,000,000 lifetime gift tax exemption, few

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<sup>1</sup> Because future rates and exemptions are not yet known, for purposes of this article the authors will assume that the 2009 top estate tax rate of 45%, the estate tax exemption of \$3,500,000, and the lifetime gift tax exemption of \$1,000,000 will remain in effect indefinitely.

will do so using cash. Depleting personal liquidity by transferring cash to an irrevocable trust is viewed unfavorably. Most planners will accurately point out that discounting opportunities are available with other assets such as real estate or minority interests in family controlled entities. However, while gifts of these discounted assets are more efficient for transfer tax purposes, they often do not provide the liquidity necessary to pay the insurance premiums. Additionally, utilizing annual exclusion gifts of cash to pay premiums may or may not be possible due to the number of potential beneficiaries and/or the size of the premium.

Private Split Dollar, when properly designed and implemented can provide an ideal solution to these obstacles.

### **What is Private Split Dollar?**

In its broadest application, split dollar is an arrangement whereby two parties enter into an agreement to “split” the costs (premiums) and benefits (cash value and death benefit) of a life insurance policy.<sup>2</sup> Traditionally split dollar involved an employer-employee relationship. The rules were disjointed and often applied inconsistently. However, the IRS finished its comprehensive evaluation of split dollar in 2003 and published Final Regulations (“Regulations”) with a detailed set of rules covering new split dollar arrangements created after September 17, 2003 and older split dollar arrangements that are “materially modified” after September 17, 2003.<sup>3</sup> Although some thought the issuance of the Regulations in September of 2003 would bring an end to split dollar transactions, in reality it created new and better opportunities for private split dollar, particularly for estate planning purposes.

Under the Regulations, private split dollar will fall into one of two mutually exclusive tax regimes: the loan regime or economic benefit regime. The defining point to determine the appropriate regime is the ownership of the policy. Generally, the loan regime (collateral assignment method) will be used when a donee is the owner of the insurance contract. Conversely, the economic benefit regime (endorsement method) will be applied if the donor is the owner of the insurance contract.

#### **The Economic Benefit (EB) Regime**

The economic benefit regime divides a life insurance policy into two parts: (1) the term insurance value of the life insurance death benefit (known as the “economic benefit” of the policy) and (2) all other rights of the insurance contract (including cash value and surrender rights). As a result, one party to the split dollar arrangement is responsible for the cost of insurance and the other party pays the balance of the premium. This type of arrangement may be desirable in situations in which the term cost is very low, today and in the near future. Under “economic benefit” private split dollar, the premium payor’s

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<sup>2</sup> This is not a split ownership arrangement in which rights are equally divided proportionate to ownership. Split ownership is specifically excluded from the Regulations. Why split ownership is not considered in a private structure is because of estate inclusion of the death benefit under IRC § 2042.

<sup>3</sup> Final Regs: 68 FR 54336-01, 2003-46 I.R.B. 1055 (Wednesday, September 17, 2003).

gift tax consequences are based upon the “economic benefit,” or term cost of the life insurance policy.

The Regulations do not clarify or expand upon the use of an insurer’s one-year term rates or the rates in Table 2001 as the measure of the reportable economic benefit. Rather, the Regulations introduce the concept of a “life insurance premium factor” as designated or permitted in guidance to be published in the Internal Revenue Bulletin under Treasury Regulation Section 601-601(d)(2)(ii). Unfortunately, there has been no published guidance on this point. Until then, it appears that the value of the economic benefit can continue to be based upon either Table 2001-10 or the insurance company’s cost of term insurance (subject to the heightened usage standard set forth in Notices 2002-8 and 2002-59).<sup>4</sup> *But see also* *PLR 200910002*. For joint life policies, most believe a formula similar to the one described in the “Greenberg to Greenberg letter” should be used (updated to use the Table 2001 rates).<sup>5</sup>

The economic benefit regime can be structured in either of two ways: standard endorsement method or non-equity collateral assignment. Under the standard endorsement method, the premium payor owns the life insurance policy and rents the coverage to the non-owner. Since this creates certain concerns for estate inclusion if the insured is the premium payor, this method is rarely considered in a private arrangement unless the spouse is the payor and the successor owner is not the insured.

Although the general rule provides that the contract owner will dictate the regime, the Regulations create an exception in the form of non-equity collateral assignment. In this type of split dollar arrangement, if the donee, usually an irrevocable life insurance trust (“ILIT”), is the owner of the contract and the only benefit provided to the donee is the death benefit because the donee must repay the donor the greater of cash value or premiums paid, then the donor is deemed the owner of the policy for the sole purpose of the application of the split dollar rules (not incidents of ownership rules under IRC § 2042 absent other reasons) and the donee may be listed as the policy owner.<sup>6</sup> Under this arrangement, the non-premium payor (the donee, usually an ILIT) legally owns the policy and assigns back to the premium payor an interest in the policy equal to the greater of the policy cash values or the total premiums paid. If the insured dies, death benefits are first used to pay the greater of the cash values or premiums paid to the premium payor (donor) or his estate and the remaining death benefits are paid to the policy owner’s beneficiary (donee).

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<sup>4</sup> Notice 2002-59 states “[I]f a donor pays the premiums on a life insurance policy that is part of a split-dollar life insurance arrangement between the donor and a trust and, under the arrangement, the trust has the right to current life insurance protection, the current life insurance protection has been conferred as an economic benefit by the donor on the trust, and the donor is permitted to value such current life insurance protection for Federal tax purposes using either the premium rates in Table 2001 or the insurer’s lower published premium rates.”

<sup>5</sup> Letter dated August, 10, 1983 from IRS actuary Norman Greenberg (in response to a request from Morton Greenberg, Counsel and Director of Advanced Underwriting, Manufacturer’s Life) in converting individual PS 58 rates to what is now known as the PS 38 rates (but should technically be referred to as the “Survivorship PS 58 Rates”).

<sup>6</sup> Treas. Reg. 1.61-22(c)(1)(ii)(A)(2)

A non-equity collateral assignment arrangement may be considered a contributory or non-contributory plan. If it is a contributory plan, the donee will pay the economic benefit to the donor from current assets. For example, if used with an ILIT, the Trustee of the ILIT will pay the economic benefit portion of the premium with current assets that have been gifted to the ILIT by the grantor (using Crummey gifts or using other assets already owned by the ILIT). If the donee pays the economic benefit cost of the insurance, this payment will be considered income to the donor. This may be an issue if the arrangement does not involve a grantor-defective ILIT. In contrast, a non-contributory plan would be a non-equity collateral assignment arrangement in which the donor pays the premium in its entirety. In this case, the donor makes an indirect gift to the donee which may or may not qualify for the annual exclusion under § 2503(b).

### The Loan Regime

Any split-dollar arrangement that is not taxed under the economic benefit regime will be taxed under the loan regime. This includes those arrangements traditionally described as “equity collateral assignment split-dollar.” Under the loan regime, Treas. Reg. § 1.7872-15 imports the same definitions of “split-dollar arrangement” set forth in Treas. Reg. § 1.61-22 (dealing with the economic benefit regime). The Regulations provide that a split-dollar arrangement exists when: (i) payment is made, directly or indirectly, by the non-owner to the owner (or directly to the insurance company), (ii) expectation of repayment, with or without interest, to the non-owner is reasonable, and (iii) such repayment is to be made from (or secured by) policy values or death benefit.<sup>7</sup>

In a traditional loan regime arrangement, the donor will be the grantor of a grantor-defective ILIT and the donee will be the ILIT. In this arrangement, the donor will pay the premiums for the insurance policy, and the payment of the premiums will be considered a loan to the ILIT. The ILIT will then either pay interest on the loan, or the amount of unpaid interest will be imputed as a gift by the grantor/donor to the ILIT/donee. There are several ways that the loan arrangement between the donor/grantor and donee/ILIT can be structured.

The Regulations provide that if a loan regime split dollar arrangement is not a below-market loan, as defined by IRC § 7872 and Treas. Reg. § 1.7872-15(e), it is governed by the general rules for debt instruments and original issue discount. However, if the split-dollar loan is a below market loan enumerated under IRC § 7872(c)(1), the loan is recharacterized as a loan bearing interest at the applicable federal rate (“AFR”) with imputed transfers consistent with the general provisions of IRC § 7872. As a result, the amount by which the AFR exceeds the stated interest is deemed to have been transferred

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<sup>7</sup> Treas. Reg. § 1.7872-15(a)(2): In a private split dollar arrangement, the children, grandchildren or a trust will be considered the “owner” of the life insurance policy and borrower(s). In turn, the grantor is considered the “non-owner” and will take a collateral assignment against the policy. A strict collateral assignment is not considered an incident of ownership for §2042. However, the amount of the loan will be included in the lender’s gross estate.

from the lender to the borrower as a gift and then paid back to the lender as interest income (this is the “foregone interest”).<sup>8</sup>

The timing, amount, and nature of the imputed transfers (i.e., the type of income to the non-owner) will depend upon the relationship between the lender and the borrower (e.g., employer-employee, corporation-shareholder, donor-donee, etc.) and whether the loan is a demand loan or a term loan. A demand note is any note that may be called by the lender at any time within the year or thereafter and has no specific maturity date. Alternatively, a term loan generally has a fixed or specific repayment date represented by either a number of years or an event.

Because of accounting reasons, cost of administration, and gift tax concerns, a demand loan should not be overlooked. A split-dollar demand loan is a below-market loan when the stated rate of the loan is lower than the blended annual rate for the year in which the loan is tested.<sup>9</sup> If a split-dollar demand loan is a below-market loan, the foregone interest is deemed to be transferred annually from the lender to the borrower as a gift and then retransferred to the lender as interest income.

If the split dollar loan is structured as a term loan rather than a demand loan, the present value of the entire foregone interest, measured as the difference between the present value of all payments to be made under the loan and the amount of the loan, is treated as having been paid, and repaid, on the day the loan is made – that is, all up front. However, there is an exception when the loan is designed for the life of the insured(s). This is commonly referred to as a hybrid loan because it blends term and demand note rules.<sup>10</sup> Since a hybrid loan is technically a term note, the applicable federal rate considered will correspond to the life expectancy of the measuring life. However, unlike a term note under 7872, special treatment is applied in which the loan interest is not accelerated in year one (1) of the loan like a term loan but is determined annually like a demand note.

Just because interest is to be paid does not remove the structure from § 7872. The most significant provision of the Regulations, which was not in the proposed regulations, causes the stated interest on a loan to be disregarded (converting it to a loan governed by Section 7872) if “all or a portion of the interest is to be paid directly or indirectly by the lender (or a person related to the lender).” Overall, a “facts and circumstances” test will be used to determine if the interest is “to be paid” by the lender. A common example of this may be a circular gifting of cash to a trust and an immediate payment of interest from the trust to the grantor/lender for interest due. If this is the case, then the payment of interest may be disregarded and the loan may be considered a “no interest” loan subject to the rules of § 7872. For this reason, the trust should have its own assets to pay interest independently of any recent gifts to trust – keeping in mind the fact and circumstance test.

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<sup>8</sup> The income tax result may be mitigated with the use of a grantor ILIT. See Rev. Rul. 85-13.

<sup>9</sup> Treas. Reg. § 1.7872-15(e)(3)(ii).

<sup>10</sup> Please note: There is an exception for gift loans; however, this exception only applies to income tax calculations and not gift tax calculations. As such, a gift term loan not designed for life could accelerate all interest as a gift in year one (1) of the loan. Treas. Reg. § 1.7872-15(e)(5)(iv)(D).

In addition, if loan interest is waived, cancelled or forgiven, then the accrued but unpaid interest is deemed to have been transferred to the lender as interest income and retransferred to borrower as a gift. As you will notice, the ordering is slightly different from a traditional loan under § 7872. This is because the amount of interest under this situation deemed retransferred to the borrower is increased by a deferral charge equal to the average quarterly underpayment rate. The intent was to prevent backend transfers which would have allowed either an income or gift tax play.

### Comparison of the Regimes

Assume a couple with a \$30,000,000 net worth are both age 60 and have two children. The couple has done no prior planning or gifting. The couple is in reasonable health and would qualify at standard rates but would not qualify at preferred rates with a life insurance company. There is a clear need for \$10,000,000 of liquidity at the second death for estate tax purposes; therefore, life insurance is being considered.

One of the clients creates an irrevocable trust for the benefit of the clients' children. The trust will be considered a grantor trust to the settlor for income tax purposes, but not estate tax purposes. The couple selects a premium of \$165,000 payable for 15 years at which point the policy is guaranteed to be paid up through age 100. The face amount will increase by the premium and at the end of 15 years the death benefit will be \$12,475,000 and remain level. Three options exist for paying the premium – outright gifts, loan regime split dollar or non-equity collateral assignment split dollar.

Under the first option, the couple would gift the annual premium to the trust each year. Assuming full “Crummey rights” are available, thus allowing \$52,000 a year to be considered eligible for annual exclusions, the parents will have made a taxable gift of approximately \$113,000 a year. Unfortunately, the gift will reduce the couples' lifetime exemption by \$113,000 each year (assuming no increase in annual exclusion amounts) and over the 15 years of premium payments, the couple would use \$1,695,000 of their combined \$2,000,000 exemption. The total cost to the couple in this case would be the total of all premiums or \$2,475,000.

Alternatively if the couple uses loan regime split dollar, each premium paid by the couple will be considered a new loan and require a new interest rate to be applied. Over the 15 year period, this method could result in 15 different notes and interest calculations. Although unlikely in light of recent increasing interest rates, for simplicity, let's assume the appropriate interest rate is level at 5% for all years a premium payment is made. The trust must pay interest to the couple each year on the premiums advanced by the couple.

The first year the interest is \$8,250, the second year \$16,500, and so on until the 15th year in which the annual interest is approximately \$123,750 a year. If the trust does not have independent resources available for the trust to pay the required interest to the couple, it is considered a gift from the couple to the trust. After 15 years of premium payments, the trust (assuming a 5% constant interest rate) must pay the couple \$123,750

each and every year until the couple is repaid in full for all premium advances. As above, either lifetime exemption will be needed or some gift taxes will be triggered. With the design of a limited 15 year payment plan, although the premiums would stop at the end of 15 years, the couple is deemed to make gifts of the interest every year until the premiums are paid in full. Therefore in addition to the premiums (\$2,475,000) the deemed gifts of interest would total an additional \$2,846,250 if the premiums are not repaid by the 30<sup>th</sup> years, the couple's age 90. The potential total cost after 30 years is over \$5,321,000.

The last option is a non-equity collateral assignment (to be taxed under economic benefit regime). We use this arrangement instead of the traditional economic benefit regime to mitigate concerns of estate inclusion that would have been triggered if the donor is the actual contract owner. Under this structure, no other value is transferred to the trust other than the death benefit in excess of the premiums or cash value, whichever is greater. The economic benefit is projected to be equal to the probability that both insureds will die in the same year. This "joint term" cost is initially very low, only \$435 the first year. Over time, the rate will increase. Even so, the cost remains inexpensive while both insureds remain alive. For example, the economic benefit in the 5th year for \$10,000,000 is only \$1,111. This cost increases to \$3,586 in the 10th year and \$9,334 in the 15th year when the couple is age 74.

In a contributory arrangement, the trust is contributing the economic benefit toward the premium and the couple is advancing the balance. Assuming the couple made a \$26,000 cash transfer to the trust in the first year that qualifies under "Crummey," and if the trust earns 5% on the initial cash contribution, the trust can pay the economic benefit share of the premium for the first 14 years with only an additional \$5,000 gift needed in the 15<sup>th</sup> year to satisfy the final shared premium.

Although it would appear as though a survivorship policy subject to a non-equity collateral assignment split dollar plan is ideal, there can be significant problems in the future. After the premium payments stop, the economic benefits do not stop. There is still an annual economic benefit derived by the trust since the split dollar agreement remains in effect. Just like the loan regime method discussed above, the trust must now either pay the couple the economic benefit or it is a deemed gift by the couple to the trust, which may not qualify as a "Crummey" eligible gift. Since the economic benefit is a term charge, as a couple's age increases, so does the economic benefit.

For example, the joint term cost (economic benefit) for \$10,000,000 of insurance under this form of split dollar increases from \$9,334 at age 74, to \$24,841 at age 79, to \$66,177 at age 84 and over \$500,000 at age 95. When one of the insureds dies the rates change from a joint rate to a single life table. If both clients are alive at 74, the economic benefit is only \$9,334 but if only one of the clients is alive at age 74, the economic benefit would be over \$300,000.

### **Exit Strategies**

Private split dollar can provide tremendous leverage, but it can also lead to excessive costs if there is not a method in place to unwind or exit the plan by repaying the donor. As previously illustrated, if one of the clients is not living in the 15<sup>th</sup> year, the economic benefit is more than the premium due that year and it will continue to increase each year (over \$492,000 at age 79 and over \$803,000 at age 84). The economic benefit does not stop because the premiums stop. Because of this, it is important to have an exit strategy for either regime, especially for a survivorship policy that starts off with the economic benefit regime (available using non-equity collateral assignment).

Generally, exit strategies are broken down as either a testamentary or lifetime strategy. The most common testamentary arrangement is to repay the split dollar from the death proceeds. This option is not available at the first death under a survivorship policy because no death proceeds are payable until the second death of the insureds. Therefore, alternative exit strategies must be considered.

Fortunately there are many other more efficient options available. For example, a “by-pass the by-pass trust” strategy is a potential testamentary solution. In this situation, the deceased client leaves his/her remaining estate tax exemption amount to the ILIT instead of the traditional by-pass trust. Up to \$3,500,000 could be left tax free to the ILIT to repay the split dollar agreement (assuming no lifetime gifts have been made). Even in circumstances where the lifetime exemption has been used, the estate tax exemption at death is still available up to the difference between the estate tax exemption (\$3,500,000) and the lifetime exemption (\$1,000,000) or \$2,500,000.<sup>11</sup>

If a non-equity collateral assignment arrangement is employed, then the repayment amount will be the greater of premiums paid or cash surrender value. Today’s life insurance products utilize guaranteed premiums and guaranteed death benefits that have cash values that are less than the cumulative premiums paid, therefore the repayment amount will generally be premiums paid.

For clients utilizing a by-pass plan, with the balance going to the marital trust so no estate tax is due, there should be no decrease in assets available to a surviving spouse in this structure because the split dollar repayment will be paid to the estate and then allocated to the marital trust or surviving spouse. Should the bequest of the split dollar repayment amount generate an estate tax, the client may still consider leaving the net amount of total premiums to the trust and paying the estate tax.

In contrast, lifetime exit strategies require a little more planning from the onset. Lifetime exit strategies are needed to ensure the gift will not become too large due to the clients living too long. In the example above, the joint life expectancy is around age 87 and if both lived thru age 87, the total gifts for economic benefits would be over \$676,000.

Although there are many options for lifetime exit strategies, an excellent strategy often used is the non-controversial structure of a Grantor Retained Annuity Trust (“GRAT”)

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<sup>11</sup> Further consideration should be taken when using the “by-pass the by-pass trust” exit strategy in states that have decoupled from the federal estate tax.

that terminates to the insurance trust. A GRAT is a trust arrangement whereby the grantor (client in our example) transfers an asset to a trust and retains an annuity payment stream back for a certain term of years. At the end of the expiration of the term of years, the asset transferred (to the extent it has grown in excess of the § 7520 hurdle rate) will pass to the remainder beneficiary of the GRAT and the grantor no longer has an interest in the underlying asset. A GRAT gives a client the ability to move future value in excess of currently low hurdle rates without significant gift taxes. The remainder beneficiary of a GRAT may be a one-generation grantor-defective ILIT. (One of the main drawbacks of a GRAT is the inability to leverage generation-skipping transfer tax exemption. Therefore, the remainder ILIT should not be a generation-skipping trust.)

Many clients are not comfortable entering into GRAT transactions because they are concerned that they may need access later to the growth of the asset to be transferred. Even so, by combining a GRAT (or numerous GRATs) with a split dollar arrangement, the value that passes to the remainder beneficiary ILIT may be returned to the donor clients up to the amount of the split dollar repayment.

Let's look at a specific example of how a GRAT can be integrated into the overall plan. If the client establishes a 15 year 8% payout GRAT with real estate valued at \$2,000,000 with a 9% yield, the gift based on May 2009 rates would be a gift of less than \$4,400. Although discounts are likely available for a variety of reasons, the authors have chosen to illustrate a non-discounted asset to illustrate how conservative this approach can be and still work. At the end of 15 years, the GRAT terminates and the remainder beneficiary is the grantor-defective ILIT that holds the life insurance policy and split dollar agreement. The remainder value, assuming no increase in the underlying property, is over \$2,587,000.

The clients have advanced approximately \$2,475,000 of premiums under the split dollar arrangement. The grantor-defective ILIT (that was the remainder beneficiary of the GRAT) now has the option of repaying all premium advances and terminating the split dollar plan. We emphasize that the trust has the option of terminating the plan but not the requirement. It may be the case in 15 years that it is beneficial to continue the split dollar plan for any number of reasons that we cannot foresee. The key point is that the ILIT now has the required capital to repay the clients all premium advances and terminate the split dollar plan.

Using the economic benefit (non-equity) method, the clients have incurred almost no cost other than opportunity costs. The clients would have made a cash gift to the ILIT of \$26,000 in the first year and \$5,000 in the 15<sup>th</sup> year to enable the trust to pay the economic benefit costs. The clients, while advancing the premiums for 15 years, would have a receivable equal to all of their premium payments. The GRAT would pay the clients an annuity equal to \$160,000/ year for 15 years. This is a lost opportunity cost of \$20,000 per year from the real estate that was yielding 9% or \$180,000. At the end of 15 years, assuming the remainder ILIT repays the premiums and terminates the split dollar plan, the ILIT owns a paid up \$12,475,000 survivorship policy. The clients have been

repaid their premium payments and the total taxable gifts are under \$4,400. This amount of leverage is remarkable.

As mentioned earlier, one of the main drawbacks of a GRAT is the inability to generation-skip. The other main drawback is the survivorship feature of a GRAT. If the grantor of the GRAT dies during the term of the annuity, some or all of the GRAT assets will be included in the grantor's estate for estate tax purposes. As a result, the GRAT as an exit strategy for the split dollar arrangement may fail. What happens now? If death occurs during the term of the GRAT, the split dollar arrangement can be changed from a non-equity collateral assignment to a loan regime structure.<sup>12</sup> In fact, for survivorship plans without a rollout strategy at the first death, it will usually be beneficial to switch to a loan regime at the first death because the loan regime will generally be more efficient for a single life split dollar plan than the single life charges from Table 2001.

Another potential exit strategy that is similar to a GRAT is an installment note sale to an intentionally defective grantor trust. Using this exit strategy, the ILIT will be the intentionally defective grantor trust to which the grantor will sell an asset in exchange for a promissory note. The promissory note will generally charge interest only for a term of years with a balloon payment of principal at the end of the term. Using this strategy, income generated from the asset can be used to pay the interest on the note for the sale of the asset, and also for the ILIT to pay the economic benefit, if an economic benefit regime is used, or required interest, if a loan regime is used. The benefit of this strategy over the GRAT strategy is that the ILIT may be a generation-skipping trust. Therefore, life insurance proceeds received in this trust will be able to continue for generations without additional transfer taxes.

Although the 2003 split dollar regulations limited the attractiveness of corporate split dollar, the regulations clarified opportunities for the acquisition of life insurance for estate planning purposes without onerous transfer taxes. Private split dollar is perhaps the most effective way to purchase large amounts of insurance outside the taxable estate without significant transfer taxes. Understanding the different forms of private split dollar and the exit strategies that are available will allow you to better serve your clients.

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<sup>12</sup> Technically, the non-equity collateral assignment is terminated and payment is made to the donor in the form of a note. Should the policy have gain, a taxable event could occur because of the transfer.

## Authors

### **Michael F. Amoia, JD, CFP<sup>®</sup>, CLU, ChFC**

Michael is Vice President of Advanced Sales for Crump Life Insurance Services and The Potomac Group, a Crump Company.\* Michael has over sixteen years of experience within the financial planning and life insurance industry. During that time, he has focused his attention mainly on estate and business planning for the ultra high net worth client. He speaks nationally at industry and non-industry events and has authored numerous articles on split dollar and advanced estate planning techniques. He received his BS in Economics from George Mason University and graduated *cum laude* from the University of Baltimore, School of Law. He is completing his LL.M. in Taxation and Certificate in Estate Planning at Georgetown University Law Center. He is admitted in Maryland.

### **Kristen E. Simmons, JD**

Kristen is a member of the law offices of Oshins & Associates, LLC in Las Vegas, Nevada. She practices in the areas of estate, business and asset protection planning. In 2008, she was listed as one of Nevada's Rising Stars in the Mountain States Super Lawyers magazine in (1) Tax and in (2) Estate Planning & Probate, an honor earned by less than 2.5% of attorneys. She attended the University of Florida, graduating *cum laude* in 2001 with a B.A. in English and a minor in Business Administration. While completing her undergraduate studies, Ms. Simmons graduated from the University's Honors Program and was inducted as a member of Phi Beta Kappa. She graduated *cum laude*, with a Juris Doctorate from University of Florida's Levin College of Law. Ms. Simmons was admitted to the Nevada State Bar in 2004 and to The Florida Bar in 2005. She is a member of the Southern Nevada Estate Planning Council.

### **Robert C. Slane, AEP, CLU**

Robert is President of The Wealth Transfer Group, Inc., located in Altamonte Springs, Florida, a suburb of Orlando, Florida. The company is an estate planning and life insurance firm that works exclusively with individuals and families with a net worth exceeding \$10,000,000. He graduated with a BA in Communications from Rollins College in 1978. He is past president of The International Forum. He is a member of the Society of Financial Service Professionals, Central Florida Estate Planning Council, National Association of Life Underwriters, and Association for Advance Life Underwriting (AALU) where he serves on the Business Insurance and Estate Planning Committee. He speaks nationally on estate planning strategies and has appeared on CNBC's Power Lunch and National Public Radio's Marketplace.