Wyden's PPLI/PPVA Deja Vu Proposal: A Tax-Shelter Narrative, a Far Broader Statutory Rule and the Continuing Importance of Current-Law Compliance

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On April 13, Senate Finance Committee Ranking Member Ron Wyden (D-Or.) introduced the *Protecting Proper Life Insurance from Abuse Act* (S. 4279).[1] The bill is substantively identical to a discussion draft circulated in December 2024 following the Committee's 18-month investigation of private placement life insurance. If enacted in its present form — an outcome that appears unlikely at this stage — S. 4279 would add a new § 7702C to the Internal Revenue Code that, for any contract meeting its definition of an "applicable private placement contract," would deny insurance and annuity treatment for federal income tax purposes, eliminating tax-deferred inside buildup, the § 101(a) death-benefit exclusion and the ordinary-course annuity tax rules of § 72.

The proposal's significance is uncertain; as discussed below, and as of now, its near-term passage into law appears unlikely. Market participants should not overreact act, and they should continue to comply with current law and guidance. The legal architecture that has governed Private Placement Life Insurance (PPLI) and Private Placement Variable Annuity (PPVA) for decades — § 817(h) diversification, the investor-control doctrine, public-availability and exclusivity limits on insurance-dedicated funds (IDFs) and insurance-dedicated separately managed accounts (ID-SMAs), and § 7702 life-insurance qualification — remains the law and the right framework for evaluating any properly designed contract.[2][3]

Why this proposal is different from ordinary tax legislation

Most tax legislation in this area refines existing conduct standards: it codifies aspects of the investor-control doctrine, tightens diversification or adjusts reporting. S. 4279 takes a different path. Rather than amending § 817(h) or codifying the factors examined in *Webber v. Commissioner*[4] or *Christoffersen v. United States*[5], it superimposes a bright-line, mechanical structural rule on top of the existing regime. A contract that satisfies every requirement of current law — diversification, no investor control, public-availability/exclusivity, § 7702 and meaningful death-benefit economics —

would still be reclassified as an "applicable private placement contract," unless the segregated asset account in which it sits supports at least 25 unrelated holders on a fully pro rata basis.

As a practical matter, the proposal also reaches the eligibility and suitability architecture through which privately placed insurance and annuity products are distributed, including accredited-investor, qualified-client, qualified-purchaser and similar holder representations or determinations, even though the introduced text enumerates the holder representations as to income or assets, education or licensure, rather than using "suitability" as a standalone statutory term.

Because the trigger is structural rather than conduct-based, the bill's reach is materially broader than the abuses identified in the Senate Finance Committee's 2024 staff report.[6] The 25-contract test would, as a practical matter, tend to preclude certain basic violations of the investor-control doctrine. But the same test, applied as a categorical disqualifier, would also reach single-client and small-group arrangements that comply fully with current law and present no investor-control concern. The proposal uses a broad proxy to address a narrower problem, and that proxy raises substantial policy, administrability, reliance and line-drawing concerns.

The intended-to-be-chilling tax-shelter label is not legal analysis

The Senate Finance Committee's 2024 release[7] described PPLI as a "buy, borrow, die" tax shelter, while the staff report characterized the PPLI industry as "at least a $40 billion tax shelter," and the April 2026 release[8] announcing S. 4279 repeated that framing. The rhetoric is forceful, but it is rhetoric. It is not the legal test, and it should not be confused with one.

A properly structured and operated PPLI or PPVA contract is not a tax shelter merely because it is privately placed, offers access to alternative investment strategies or requires the holder to make securities-law eligibility representations as to income or assets, education or licensure. The relevant legal analysis turns on a different set of inquiries:[9], [10]

- § 817(h) diversification, applied to the relevant *segregated asset account* as defined by Treas. Reg. § 1.817-5(e) — distinct from the state-law separate account through which the contract is issued;[11]
- investor-control compliance, including absence of holder direction over specific investments, communications with portfolio personnel, or de facto authority to extract or rearrange assets;
- public-availability and exclusivity, particularly the requirement that beneficial interests in an IDF be available solely through qualifying variable contracts;
- insurer or adviser discretion over the assets supporting the contract;[12] and

- for PPLI, qualification as life insurance under applicable state law and § 7702, with meaningful death-benefit economics rather than nominal coverage.

The cases that the Committee staff cites — *Christoffersen and Webber* — are fact-sensitive tax-ownership decisions, not categorical condemnations of variable-contract design. They underscore that diversification and investor control are independent inquiries, and that conduct, not labels, drives the outcome.

We also avoid, in our own usage, the term "wrapper." The Committee staff and parts of the market use it, and we mention it here because it appears in those materials. But the term implies that an insurance or annuity contract is merely a tax cover placed over an investment account. A properly designed contract has independent legal, actuarial and economic substance — manifest in a death benefit in excess of the contract's cash surrender value — and the vocabulary should reflect that.

What the proposal would attempt to do if enacted

S. 4279 would add a new § 7702C and related provisions. The principal mechanics, drawn from the introduced text, are summarized below.

Definition of a private placement contract

A "private placement contract" is a contract that, without regard to the new section, would be a life insurance contract under § 7702 or an annuity contract under § 72, and a variable contract within the meaning of § 817(d), and with respect to which the holder is required, for *purposes of obtaining a registration exemption under the securities laws as in effect on enactment* (including the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940), to represent that the holder (i) has a specified minimum amount of income or assets, (ii) has completed a specified minimum level of education, or (iii) holds a specific license or credential.

Definition of an applicable private placement contract

A private placement contract becomes an "applicable private placement contract" (APPC) if the segregated asset account described in § 817(d), to which contract amounts are allocated, does not satisfy the new § 7702C(c) requirements: the account must support at least 25 private placement contracts, and each contract must be supported by every asset in the account in the same proportion as every other contract. All contracts held directly or indirectly by the same person or by a person related under §§ 267(b) or 707(b)(1) (with attribution rules expanded to a broad family unit) are aggregated and treated as one contract.

Foreign-issued contracts

A contract issued outside the United States that would be a life insurance or annuity contract under foreign law (or, except as provided by regulation, would be such a contract if issued domestically) and that has a variable component is treated as an APPC regardless of whether the 25-contract requirement is satisfied. The practical effect would be to remove non-US-issued contracts from the regime's favorable treatment for US holders.

Proposed tax consequences for holders of an APPC

- Annual current taxation of the holder's share of the segregated asset account's net income, gain, loss and credit, on a pass-through basis, regardless of whether amounts are distributed.
- Ordinary-income treatment of all distributions, including death-benefit payments, annuity payments, withdrawals and policy-loan proceeds, to the extent in excess of the holder's adjusted basis. The § 101(a) exclusion and the standard § 72 annuity rules cease to apply.
- Once a contract is treated as an APPC for any period, it would remain an APPC permanently, even if it later returns to compliance.

Proposed treatment of issuers and reinsurers

Premiums received and reserves established with respect to an APPC would not be treated as life insurance or annuity premiums and reserves under subchapter L; the issuer would account for premiums, expenses and fees on the accrual method. Foreign issuers of APPCs to US holders would remain subject to the § 4371 federal excise tax.

Proposed information reporting and FATCA changes

A new § 6050BB would impose initial and annual return obligations covering holder identity, basis, related contracts, items of income and loss, and distributions. A new § 6720D would impose a $1 million penalty for failure to file an initial return, plus an additional $1 million for each 30-day period the failure continues. The bill would also amend § 1471 to treat insurance companies that hold themselves out as life insurance companies as foreign financial institutions for Foreign Account Tax Compliance Act (FATCA) purposes, and to treat private placement contracts (including their segregated asset accounts) as financial accounts.

Proposed application date and transition mechanics if enacted

As drafted, the bill would apply to contracts issued before, on or after enactment, with a 180-day window in which an existing contract that would otherwise be an APPC may be exchanged for or converted to a non-APPC, surrendered or liquidated.

Current law is still the law and still matters

Whatever happens to S. 4279, the existing legal framework remains the operative law of PPLI and PPVA, and market participants' day-to-day compliance posture should not change in response to a proposal. The principal current-law touchpoints are familiar but bear repeating:

- § 817(h) and Treas. Reg. § 1.817-5 diversification, applied at the segregated asset account level, with the look-through rule of Treas. Reg. § 1.817-5(f) treating a qualifying interest in an IDF as a pro rata share of the underlying assets;
- the investor-control doctrine, with Rev. Rul. 2003-91 supplying the favorable conduct template (insurer or adviser sole and absolute investment discretion, no impermissible holder communications with portfolio personnel, no holder selection of specific investments) and *Webber* supplying the cautionary fact pattern;
- public-availability and exclusivity, with Rev. Rul. 2003-92 and Treas. Reg. § 1.817-5(f)(2)(i) requiring that interests in IDFs be available exclusively through qualifying variable contracts;
- insurer or adviser discretion, reaffirmed in PLR 202041005;
- for PPLI specifically, qualification as life insurance under applicable state law and § 7702, with meaningful net-amount-at-risk and death-benefit economics rather than vestigial coverage.

Closing thoughts

S. 4279 is a serious (though in our view, poorly conceived) legislative proposal from a senior member of the Senate Finance Committee and should be tracked carefully. It is not, however, a final rule. It has no announced co-sponsors, no House counterpart and no scheduled action; the 2024 discussion draft did not advance. A reasonable working assumption is that, if any reform in this area is ultimately enacted, it may differ materially from S. 4279 in scope, structural design, transition mechanics and effective date.

Our posture, therefore, remains unchanged: assist market participants with careful design driven by current law, operation, documentation and review of PPLI, PPVA, IDF and ID-SMA arrangements, while monitoring whether any legislative proposal in this area gains meaningful traction.

Katten's 14th Annual Tax-Efficient Investing Forum will be held on September 9; readers interested in PPLI, PPVA, IDFs, ID-SMAs and related tax-efficient investing topics are warmly invited to attend.[13]

1 S. 4279, 119th Cong., Protecting Proper Life Insurance from Abuse Act, introduced text, https://www.congress.gov/119/bills/s4279/BILLS-119s4279is.pdf.

2 26 U.S.C. § 817, https://www.law.cornell.edu/uscode/text/26/817.

3 26 U.S.C. § 7702, https://www.law.cornell.edu/uscode/text/26/7702.

4 *Webber v. Commissioner*, 144 T.C. 324 (2015), https://scholar.google.com/scholar_case?case=3441219414163278230.

5 *Christoffersen v. United States*, 749 F.2d 513 (8th Cir. 1984), https://law.justia.com/cases/federal/appellate-courts/F2/749/513/359605/.

6 Senate Finance Committee staff report on PPLI (Feb. 2024), https://www.finance.senate.gov/imo/media/doc/ppli_report_final.pdf.

7 Id.

8 Senate Finance Committee, ranking-member release (Apr. 13, 2026), https://www.finance.senate.gov/ranking-members-news/new-wyden-bill-would-close-private-placement-life-insurance-tax-shelter-abused-by-the-ultra-rich.

9 Rev. Rul. 2003-91, https://www.irs.gov/pub/irs-drop/rr-03-91.pdf.

10 Rev. Rul. 2003-92, https://www.irs.gov/pub/irs-drop/rr-03-92.pdf.

11 Treas. Reg. § 1.817-5, https://www.law.cornell.edu/cfr/text/26/1.817-5.

12 IRS PLR 202041005, https://www.irs.gov/pub/irs-wd/202041005.pdf.

13 Katten, 13th Annual Tax-Efficient Investing Forum (Sept. 9, 2025), provided as context for the forum series, https://katten.com/13th-annual-tax-efficient-investing-forum.

CONTACTS

For questions about S. 4279 or about the design, operation or review of PPLI, PPVA, IDF or ID-SMA arrangements, please contact your Katten attorney or the following Financial Markets and Funds attorney.

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Henry is recognized as a leading adviser to investment managers, funds, investors, and creators and distributors of alternative investments. Drawing on securities, commodities, tax and insurance law, he is among a small handful of leading attorneys nationwide in insurance-dedicated funds, ID-SMAs, and privately placed life insurance and annuities.

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