

## Live for Today and Plan for Tomorrow

# A DISTURBING JOBS TREND

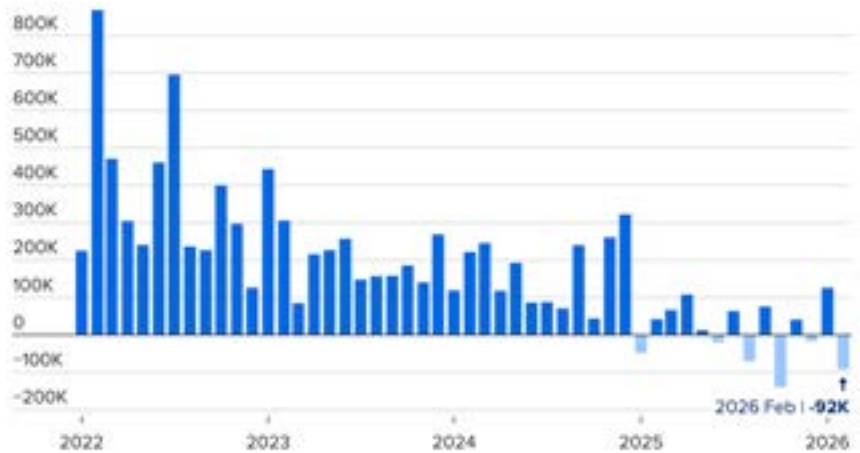
Is the United States in a recession, and we just don't know it?

By the time a recession has been declared by the National Bureau of Economic Research, it may already be over. NBER, as it is called by economists, defines a recession as a significant decline in economic activity (the gross domestic product) that is spread across the economy and lasts more than a few months. Basically that means that people will have lived in a recessionary period for a third of a year before NBER has collected enough economic statistics to tell them that they were, in fact, dealing with an economic downturn.

And, of course, some of the pain of a recession can be felt before the economic downturn is visible in the numbers. We might be in that situation currently. In 2025, the U.S. economy saw a decline in blue collar jobs, and overall it was one of the weakest periods of job growth since the Covid pandemic. Last month, economists were either surprised or shocked to see

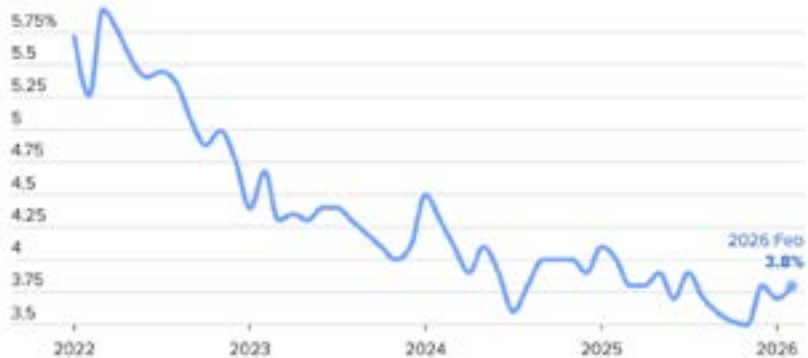
**Monthly job creation in the U.S.**

Jan. 2022–Feb. 2026



**Growth in average hourly earnings in the U.S.**

Year-over-year percent change | Jan. 2022–Feb. 2026



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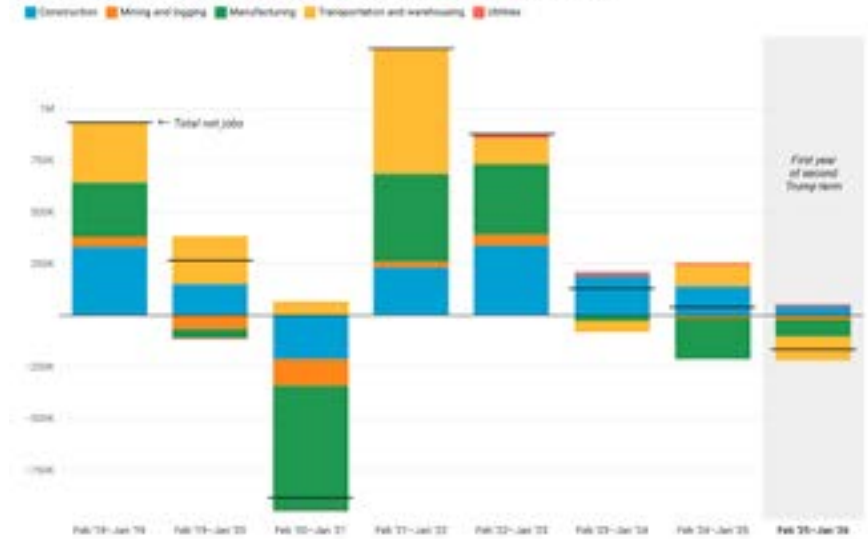
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that U.S. payrolls, overall, fell by 92,000 jobs, and the unemployment rate had risen to 4.4%.

That 4.4% figure is still moderate by historical standards and well below the 10% levels during the Great Recession. But the jobs report, both last month and last year, adds a data point to a new spike in inflation as gas prices have risen following the war in Iran. And, as you can see from the chart, hourly earnings growth for workers is now barely keeping up with inflation, and has become a bit unstable in recent months.

What does it all mean? None of the statistics, in isolation or in aggregate, give us a definite warning sign that we're about to experience an economic recession. But, as mentioned earlier, the pain of a recession is generally felt—often by blue collar workers without a college degree—months before NBER

**Blue-collar job growth plummeted during the first year of the second Trump administration**  
 Cumulative change in blue-collar employment by industry from February to January, 2018 to 2026



has collected enough numbers to tell us what we're experiencing. NBER economists will not be the only ones watching the numbers in the coming months.

Sources:

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# BEAR MARKET BENEFITS

**T**he war in Iran and persistent inflation have clearly spooked short-term investors who like to jump into and out of the market based on the prevailing winds. U.S. stock indices have fallen for three weeks, albeit so gradually that most investors have hardly felt the impact. The S&P 500 is now trading less than 5% below its January 2026 record high, which is not quite half of a correction, and less than a fourth of a bear market.

Still... Savvy advisors are beginning to dust off their bear market toolkits, which allow them to take advantage of lower stock prices should they manifest in the future.

The tools can be impressively beneficial in gloomy times. The simplest is to sell stocks that are trading at prices below their original cost, which generates valuable losses that can be used to lower your tax bill. Professional advisors can also help investors to convert some of their IRA hold-

ings over to a Roth account at these lower prices, reducing the tax bill on the conversion, and moving money into an account that will never again be taxed.

People can also gift stock shares up to a value of \$19,000 per recipient (\$38,000 for couples) to their children without any tax consequences. If the stock is less valuable at the time of the gifting, more of it can be transferred during the (presumably) temporary bear market.

And finally, when stocks go on sale, bargain shoppers who can overcome their fear are able to scoop up shares at a discount—remembering, of course, that there's nothing to say that those stocks won't be selling at even greater discounts during the remainder of the bear market cycle.

What advisors are NOT dusting off is a market timing tool. Getting out of the way of a bear market, moving to cash and stuffing the money under your mattress, sounds like a terrific idea

until you realize that you have to decide when to buy back into the market. Should you wait until the market goes up? How far would it have to go up before you're convinced that the bear market is over? Chances are, THAT point would be when the market is higher than when you got out.

Anybody who is still not convinced that this is a losing strategy should take a moment to name the greatest market timers in history, the people who knew when to get in and out of the markets during past downturns. Anybody who was successful in that endeavor, anybody at all, would have attracted a lot of media fanfare.

To date, the media hasn't found anybody to shower with that attention. It's not likely that you or I would be the first.

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# OIL SHOCK EQUALS MARKET TURBULENCE

**T**he war in Iran has led to an alarming spike in oil prices, from \$65 a barrel before the U.S./Israel attacks to roughly \$115 as you read this. It's not an exaggeration to call this an 'oil shock,' and some of the shock is felt when people refuel their cars at \$4 to (in parts of California) \$6 a gallon.

Of course there are other add-on impacts. Higher oil and gas prices raise the cost of transporting goods and services to market, and any manufacturing that requires energy (virtually all of it) experiences higher costs and either lower profit margins or lower sales as they pass on the additional costs to consumers. The CEO of United Airlines recently announced that air fares will rise 20% if the war isn't resolved quickly.

So it's natural to ask how any of this will affect the American and foreign stock markets.

There are no definitive answers, of course. In the short term, the S&P 500 has recently experienced two consecutive trading days with 1.5% losses, which means that quick-twitch traders went into a bit of a panic.

In the long term, the economic effect may be temporary, assuming that oil prices return to prior levels. However, longer-duration energy cost increases tended to be associated with higher inflation, lower profits, decreased consumer spending and economic downturns. Shorter spikes can be taken in stride; longer periods of oil price rises can trigger a recession.

The recessionary scenario happened following the Arab oil embargo in the 1970s led to (ultimately) a 1,000% rise in the price of oil that became a permanent fixture of business life. The American investment markets declined in 1973 and 1974, and failed to recover those losses until 1982. But when oil prices temporarily rose more than 60% during the first Gulf War in the early 1990s, the stock market indices reported gains—perhaps because there was no recession.

Overall, looking back over the past 40 years, the S&P 500 has tended to perform better in years when oil prices rose than when oil prices were declining. That may be because a robust economy means more oil consumption, which means rising

oil prices—and markets, of course, tend to go up in robust economies. When the economy is less robust, there is less demand for oil and prices go down—and that's associated with less-robust stock market movements.

The truth is that oil price movements, in the short term, are poor predictors of stock market performance, and the recent spikes are no reason for panic. So far, there is no sign that the current disruption in oil supplies will permanently reset the price of oil—but it might lead to a bumpy month or two as investors gradually figure this out on their own.

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*A legal analysis of the most powerful and controversial wealth preservation tool in American tax law.*

There is a legal structure sitting at the intersection of tax law, securities regulation, estate planning, and insurance law that enables some of the wealthiest individuals in the United States to invest in hedge funds and private equity funds and pay, in many cases, zero federal income tax on their returns for decades. It is not offshore tax evasion. It is not an illegal shelter. It operates entirely within a framework of statutes and regulations that Congress deliberately enacted. It is called Private Placement Life Insurance, and it has quietly grown into a 40-billion-dollar industry before the U.S. Senate decided to take a close look.

In February 2024, Senate Finance Committee Chairman Ron Wyden released the results of an 18-month investigation. The report described PPLI as a tax shelter masquerading as insurance. By December 2024, Wyden had circulated draft legislation designed to strip PPLI of its favorable tax treatment. As of early 2026, that legislation has not become law, and the opportunity for PPLI planning appears more durable than its critics expected.

This essay will walk you through exactly how PPLI works, why it is legal, why it is controversial, what the courts have said about it, where the legal risks lie, and what the regulatory landscape looks like going forward. By the end, you will understand why PPLI is one of the most consequential and underexamined topics at the intersection of tax policy and concentrated wealth.

### Part I: What PPLI Actually Is

Private Placement Life Insurance is, at its core, a permanent life insurance policy. Specifically, it is a form of variable universal life insurance issued in a private placement transaction rather than through a public registered offering. The insurance component is real: if the insured dies, beneficiaries receive a death benefit. But the death benefit is deliberately structured to be as small as the law allows, because the purpose of PPLI is not to provide financial protection against the risk of premature death. The purpose is to wrap a high-returning investment portfolio inside a tax-advantaged insurance envelope.

Think of it this way. An ultra-high-net-worth investor holds 50 million dollars that she wants to allocate to a selection of hedge funds and private equity vehicles. If she invests directly, her fund returns will generate ordinary income, short-term capital gains, and long-term capital gains, all taxed at rates ranging from 20 to 37 percent at the federal level, plus state income taxes and potentially the 3.8 percent net investment income surtax. The combined tax drag on a fund generating 12 percent annual gross returns could reduce her net return by 4 to 5 percentage points per year, compounding over decades into an enormous loss of wealth.

Now suppose she instead contributes those 50 million dollars as a premium into a PPLI policy. The same hedge funds and private equity vehicles are held inside

the policy's separate account, managed by an independent investment manager. The fund returns still accumulate. But because the assets sit inside a life insurance policy, Section 7702 of the Internal Revenue Code shields the inside build-up from current income taxation. The returns compound year after year without any annual tax. If she later accesses the cash value through policy loans, those loans are generally not taxable distributions. When she dies, the death benefit passes to her heirs entirely free of income tax under Section 101(a)(1). If the policy is owned by an Irrevocable Life Insurance Trust, the proceeds may also escape estate taxation.

The result is what policy critics have accurately described as a buy, borrow, die strategy: buy a PPLI policy and let returns compound tax-free; borrow against the cash value to fund living expenses without triggering taxable income; die and extinguish all the accrued untaxed gain in the death benefit step-up.

### Part II: The Legal Architecture

#### The Statutory Foundation

PPLI's tax treatment rests on the same statutory provisions that govern every life insurance policy in America. Congress has, for more than a century, granted preferential tax treatment to life insurance, reflecting a social policy judgment that encouraging individuals to provide for their families and heirs serves the public interest. The specific modern provisions are:

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Section 7702 of the IRC defines what qualifies as life insurance for federal tax purposes. To qualify, a variable policy must satisfy either the Cash Value Accumulation Test or the Guideline Premium and Corridor Test. The key requirement is that the death benefit must maintain a specified minimum ratio to the cash surrender value. This death benefit corridor requirement is why PPLI policies must maintain at least some insurance component: pure investment accounts dressed in insurance clothing would fail the Section 7702 test. The corridor ratios range from 250 percent of cash value for insureds under 40 to 100 percent for insureds aged 95 and above, declining with age.

Section 7702A addresses Modified Endowment Contracts. If a policy is funded too quickly relative to its death benefit, the IRC classifies it as a MEC, changing the tax treatment of distributions from the favorable first-in, first-out basis to a less favorable last-in, first-out basis and imposing a 10 percent penalty on pre-age-59.5 distributions. PPLI structures must be carefully designed to avoid MEC classification, which limits the speed at which premiums can be contributed relative to the death benefit.

Section 101(a)(1) provides the income tax exclusion for death benefits. Amounts received under a life insurance contract by reason of the death of the insured are excluded from the gross income of the recipient. For a PPLI policy that has accumulated tens of millions of dollars in un-

taxed investment returns, this exclusion is potentially worth more than the original tax savings on annual investment income.

Section 817(h) and Treasury Regulation Section 1.817-5 impose the diversification requirements. The separate account underlying a variable life insurance policy must hold a sufficiently diversified portfolio: no single investment can constitute more than 55 percent of the portfolio; no two investments more than 70 percent; no three more than 80 percent; and no four more than 90 percent. These requirements must be satisfied as of the last day of each calendar quarter, with a 30-day cure period for inadvertent failures.

### **The Insurance Dedicated Fund Structure**

Because most hedge funds and private equity vehicles cannot be directly held inside a PPLI separate account without triggering investor control issues (discussed in Part III), the industry developed a specialized vehicle: the Insurance Dedicated Fund (IDF). An IDF is a private fund created specifically for investment by PPLI separate accounts. The IDF is structured as an unregistered fund, exempt from Investment Company Act registration, and managed by an independent investment manager who makes all specific investment decisions without direction from policyholders. The IDF structure allows PPLI policies to achieve exposure to alternative asset strategies while maintaining the operational separation from policy-

holder influence that the investor control doctrine requires.

Policyholders in this framework invest by directing their policy separate account to invest in a particular IDF that corresponds to their preferred strategy. They do not tell the investment manager what to buy or sell. They select a fund; the fund manager manages the portfolio. This structural separation is the legal linchpin of compliant PPLI.

### **Who Can Buy PPLI**

The private placement structure means PPLI is available only to individuals who qualify as accredited investors under Rule 506 of Regulation D and, for IDF investments, as qualified purchasers under the Investment Company Act, meaning individuals or entities owning at least 5 million dollars in investments. In practice, PPLI carriers require minimum premiums of 3 to 5 million dollars, minimum investable net worth typically exceeding 20 million dollars, and adequate liquidity to meet ongoing insurance cost charges within the policy. The Senate Finance Committee found that PPLI constitutes only 0.003 percent of all outstanding life insurance policies in the United States, held by a small population of extraordinarily wealthy individuals.

### **Part III: The Investor Control Doctrine and the Case Law**

If PPLI's tax benefits rest on a single most vulnerable legal pillar, it is the investor control doctrine. The doctrine holds that

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if a policyholder exercises too much direct control over the specific investment decisions made within the policy's separate account, the tax law disregards the insurance wrapper and taxes the policyholder as if she directly owned the underlying investment assets, destroying the entire tax advantage.

The doctrine traces to a series of IRS revenue rulings issued between 1977 and 1982: Revenue Ruling 77-85, Revenue Ruling 80-274, and Revenue Ruling 82-54. These rulings established that the favorable tax treatment of life insurance presupposes that the insurance company, not the policyholder, bears investment risk and makes investment decisions. A policyholder who effectively controls specific investments has contracted for investment management services, not insurance, and should be taxed accordingly.

For decades, the investor control doctrine was articulated by the IRS but rarely tested in litigation. That changed in 2015 with *Webber v. Commissioner*, 144 T.C. 324, the leading PPLI case in U.S. tax law.

### **Webber v. Commissioner (2015): The Defining Case**

Jeffrey Webber was a private equity investor who purchased two offshore PPLI policies from Lighthouse Insurance Company, a carrier domiciled in the Cayman Islands, through a grantor trust. The trust contributed approximately 700,000 dollars to the policies, which then acquired

shares in three startup companies in which Webber had personal interests, valued at 2,240,000 dollars. Shortly after the policy acquired these shares, each company had a liquidity event, generating large gains inside the policy.

The problem: over the life of the policies, Webber exchanged more than 70,000 emails with the investment manager directing specific investment decisions. He told the manager what to buy, what to sell, and when to transact. He was, in substance, managing his own investment portfolio while calling it life insurance.

The Tax Court held that Webber exercised impermissible investor control and disqualified the policies from life insurance treatment. All inside build-up was deemed current income taxable to Webber. The court articulated a three-part test: who has the power to select investment assets by directing specific purchases and sales; who has the power to vote securities or exercise ownership rights; and who has the power to extract money from the account. Where the policyholder effectively exercises these powers, investor control is found and tax benefits are lost.

The court also upheld accuracy-related penalties, finding that Webber could not rely on tax advisers who had themselves designed the noncompliant structure. This penalty ruling carries a cautionary message for the entire PPLI industry: advisers who create arrangements that

violate the investor control doctrine expose clients not only to tax deficiencies but also to substantial penalties.

### **Wegbreit v. Commissioner (2019): The Follow-On**

Four years later, in *Wegbreit v. Commissioner*, T.C. Memo. 2019-82, the Tax Court applied the investor control doctrine again, finding violations in another offshore PPLI arrangement and sustaining both the underlying tax deficiency and associated penalties. *Wegbreit* reinforced that the investor control doctrine is actively enforced and that the *Webber* standard will be applied consistently. It also highlighted that compliance with the doctrine requires not merely appropriate policy language but actual operational independence of the investment manager from policyholder direction.

### **Part IV: The Regulatory and Legislative Assault The Senate Finance Committee Investigation**

The political pressure on PPLI intensified dramatically in 2024. On February 21, 2024, Senate Finance Committee Chairman Ron Wyden released the results of an 18-month investigation into the PPLI industry. The committee had obtained data from seven leading PPLI carriers covering more than 3,000 in-force policies as of year-end 2022, representing 9.5 billion dollars in assets under administration and 40 billion dollars in policy face amounts.

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The report's key findings were damning from a policy perspective. Marketing materials from the largest PPLI providers explicitly promoted their products as vehicles to invest in private equity and hedge funds tax-free and to avoid income, gift, and estate taxes. There is no current requirement to report PPLI ownership on a federal tax return, creating what the report described as a substantial enforcement blind spot. The investigation concluded that PPLI functions as a tax shelter accessible only to the ultra-wealthy that provides no meaningful insurance purpose proportionate to its tax benefits.

### The Wyden Legislation

In December 2024, Chairman Wyden released draft legislation: the Protecting Proper Life Insurance from Abuse Act. The proposal is sweeping in scope. It would eliminate the favorable tax treatment of PPLI contracts for both new and existing policies, treating disqualified contracts as investment partnerships subject to annual pass-through taxation on gains and losses regardless of whether distributions occur. It would also impose mandatory annual information reporting to the IRS on PPLI ownership, cash value, and investment returns, creating the disclosure infrastructure the IRS currently lacks to enforce investor control rules.

Critically, the proposal would extend similar treatment to Private Placement Annuities, a related structure that could

serve as a tax-equivalent substitute if only PPLI were targeted. The joint targeting of PPLI and PPAs reflects awareness that wealthy taxpayers and their advisers would otherwise migrate between equivalent structures in response to legislation addressing only one.

### The Legislative Status as of March 2026

The Wyden proposal has not been enacted. PPLI restrictions were excluded from the One Big Beautiful Bill Act, which was the primary vehicle for tax legislation in the most recent Congressional session. This exclusion has been interpreted by some practitioners as a meaningful signal that near-term legislative curtailment of PPLI may be less certain than the Committee investigation suggested. Senator Wyden, the chief PPLI critic, no longer chairs the Finance Committee, which may reduce the legislative momentum behind the proposal in the near term.

Nevertheless, PPLI remains a sustained focus of Congressional attention, investigative journalism, and academic tax policy analysis. The Tax Law Center at NYU School of Law has identified PPLI as a priority structural tax expenditure for reform. Tax Notes and other practitioner publications have closely covered the legislative developments. The combination of sustained policy criticism, documented tax revenue impact, and a small identifiable population of ultra-wealthy

beneficiaries makes PPLI a perennial target for any administration seeking to demonstrate commitment to tax fairness.

### Part V: Legal Risks and Compliance Hazards

For current and prospective PPLI policyholders and their advisers, the legal risks extend well beyond the investor control doctrine:

The diversification test under Section 817(h) must be satisfied as of the last day of every calendar quarter. A single portfolio concentration event, whether caused by market movements, an investment manager's position buildup, or a fund's asset concentration, can cause a quarterly test failure that disqualifies the policy from life insurance treatment for all subsequent tax years until the failure is cured. Sophisticated policyholders must ensure that investment managers monitor diversification compliance in real time.

MEC classification under Section 7702A will occur if premiums paid in the first seven policy years exceed the statutory seven-pay limit for the given death benefit. Single-premium and large front-loaded PPLI structures require careful actuarial planning to avoid MEC status, because MEC classification changes the tax treatment of distributions from favorable to unfavorable.

Offshore PPLI policyholders face overlapping foreign information reporting obligations. If the cash surrender value of a foreign policy exceeds 10,000

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dollars at any time during the year, the policyholder must file the FBAR, FinCEN Form 114. If cash surrender value exceeds 50,000 dollars on the last day of the tax year, or 75,000 dollars at any point during the year (with higher thresholds for married taxpayers filing jointly and for persons residing abroad), the policyholder must also file Form 8938 under FATCA. Failures to file these forms carry substantial civil penalties and, in the case of willful failures, potential criminal exposure.

Legislative risk is the most existential economic threat. If Congress enacts legislation modeled on the Wyden proposal and applies it retroactively to existing contracts, policyholders could face immediate annual taxation on inside build-up going forward, eliminating the primary economic rationale for maintaining the policies. The transition costs of unwinding a large PPLI policy could themselves generate significant tax liabilities.

### Part VI: The Policy Debate

The policy debate over PPLI sits at the intersection of several deeper disagreements about the proper role of tax law in a democratic society.

PPLI proponents argue that the product operates entirely within a statutory framework that Congress deliberately enacted, that policyholders pay genuine insurance costs that distinguish PPLI from a pure investment vehicle, and that optimizing within the law is not abuse

but rational behavior. They further argue that the tax preferences for life insurance are longstanding and have always been available to anyone willing to purchase a life insurance policy in the permitted amount. That ultra-wealthy individuals are better positioned to take advantage of these preferences reflects income inequality generally rather than a specific defect in PPLI.

Critics, including the Senate Finance Committee majority staff and the Tax Law Center, respond that the legislative history of the life insurance tax preference reveals no Congressional intent to create a vehicle for sheltering hedge fund returns from taxation. They argue that PPLI deliberately minimizes the insurance component to the point where the economic substance of the transaction is pure investment management with a thin insurance veneer. Marketing materials promoting PPLI as a tax avoidance vehicle rather than a risk management product reveal the actual purpose of the structure. And the absence of mandatory reporting creates a systematic IRS enforcement gap that advantages the ultra-wealthy at the expense of ordinary taxpayers.

The empirical center of the debate involves the actual revenue cost of PPLI. The Wyden report's 40-billion-dollar figure represents face amounts, not invested assets or forgone tax revenue. Industry participants argue that the annual reve-

nue impact of PPLI is far smaller than the face amount figure implies. Policy critics contend that even a smaller annual revenue loss is indefensible when concentrated among a few thousand individuals of extraordinary wealth.

These competing positions reflect a genuine and unresolved tension between the legal principle that taxpayers are entitled to arrange their affairs to minimize taxes, long articulated by courts, and the democratic principle that tax preferences should serve identifiable public purposes proportionate to their cost.

### Conclusion: What Comes Next

Private Placement Life Insurance is not going away. The legal framework that supports it remains intact. The legislation that would dismantle it has not been enacted. The practitioners who design and administer PPLI structures have become more sophisticated about compliance following Webber and Wegbreit. And the ultra-wealthy individuals who benefit from PPLI have every incentive to engage the best available legal and tax counsel to preserve their arrangements.

But the legal environment around PPLI has materially changed over the past two years. Congressional attention is sustained and bipartisan in its diagnosis even if not yet in its legislative response. IRS enforcement resources have increased. Mandatory disclosure legislation, if enacted, would for the first time give the IRS the data infrastructure it needs to audit

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PPLI arrangements systematically. The Webber and Wegbreit decisions have established that investor control violations carry not only tax deficiency exposure but also substantial penalty risk.

For legal practitioners, the PPLI landscape requires a careful and ongoing analysis: of investor control compliance at the operational level, not just the contractual level; of diversification test monitoring on a quarterly basis; of foreign reporting obligations for offshore structures; of MEC classification risk in front-loaded premium structures; and of the evolving legislative risk that any retroactive legislation

could rewrite the economics of existing arrangements overnight.

For policy observers, PPLI is a window into a broader structural reality: that the complexity of the American tax code, combined with the sophistication and resources of ultra-high-net-worth individuals and their advisers, consistently produces legal strategies that extract enormous value from statutory provisions in ways that were not anticipated by Congress and that are unavailable to ordinary taxpayers. Whether that is a problem to be fixed by legislation, a feature of a legally sophisticated tax system, or simply

an accurate reflection of the relationship between wealth and law in America is a question that the PPLI debate makes unavoidable.

The answer, as with most hard legal and policy questions, depends entirely on what you think the tax system is for.

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