



March 30, 2020

The Honorable Steven T. Mnuchin  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

The Honorable Charles P. Rettig  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

**Re: Request to Reconsider Internal Revenue Service Letter 6336 (3-2020) Relating to Micro-Captive Insurance**

Dear Secretary Mnuchin and Commissioner Rettig,

Much like the rest of the country, the captive insurance industry is working hard to provide the support necessary to weather the current situation as we jointly tackle COVID-19 and the economic impact this crisis is having on America's small and medium-sized businesses, their owners and employees. Many of our members work with privately held businesses that have established captive insurance companies to mitigate the risks that are extremely relevant in the current times, including supply chain and business interruption, contamination clean up, medical costs, crisis management expenses and other high severity, low frequency events. When Congress established Internal Revenue Code Section 831(b) in 1986, it sought to provide a risk mitigation tool for America's small and medium-sized businesses for exactly such purposes.

Despite the malignment of enterprise risk captives, or 'micro-captives,' by the Internal Revenue Service (IRS), these same captive insurance companies are now being vindicated as they help numerous companies survive the COVID-19 crisis and beyond. Specifically, due to the lack of insurance capacity in the commercial market, a significant portion of insurance risk has been placed in the captive market. There is little doubt that captives will be paying a significant number of claims to their insureds resulting from the current crisis. In fact, on March 20<sup>th</sup>, *The New York Times* published an article titled, "Once Scrutinized, an Insurance Product Becomes a Crisis Lifeline," in which it stated that, while the IRS is stepping up its crackdown on captive insurance abuse, "the vehicle may prove its worth during the corona virus outbreak."

Imagine the astonishment and frustration of captive insurance owners when they received IRS Letter 6336 (3-2020) (IRS Letter), dated March 20, 2020, a redacted version of which is attached. As you know, this letter was issued 4 days into the National COVID-19 Emergency Declaration to approximately 150,000 owners whose businesses are shutting-down, inaccessible or operating at diminished capacity because of the current crisis. Worse, the IRS Letter requires

recipients to access and report information about their captive insurance program by May 4, 2020, a date by which this crisis may not end, or to otherwise face an increased risk of immediate audit.

As if the IRS could not have done something more clearly insensitive, thoughtlessly timed or astonishingly draconian, the IRS Letter, itself, is so unclear that taxpayers making good faith efforts to comply could inadvertently put themselves in a position to be accused of perjury. For example, the IRS Letter requires taxpayers who have ceased participating in micro-captive transactions to report the date they ceased participating. Unfortunately, there are a number of dates that could provide reasonable responses to the question, including: the date the last insurance policy expired, the date the last insurance obligation was resolved, the date the captive surrendered its insurance license or the date the captive was liquidated, just to name a few.

Additionally, to find the information to respond, taxpayers may have to access their offices or confer with others. Either of these might not even be possible under local shelter-in-place orders or otherwise as a result of the National Emergency.

Given the current crisis, combined with the timing and the burden being placed on small- and medium-sized businesses, the IRS should suspend further audit activity until the National COVID-19 Emergency Declaration is withdrawn so as to allow businesses operating captive insurance to mitigate the risks that Congress and the Tax Code allow them to appropriately address. Furthermore, while the deadline is suspended, the overall need for the IRS Letter itself should be reconsidered and information clarified as it is possible for the IRS to deduce the answers to its own questions from information that has already been reported by taxpayers who have complied with the requirement to file Form 8886 over the past two years.

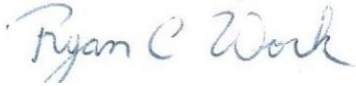
While we understand the IRS's ongoing concern over certain captives making an election under Section 831(b), the fact remains that the vast majority of businesses that finance risks using captives are doing the right thing. The IRS Letter, and other IRS actions, incorrectly makes an assumption that everyone operating a captive making an election under Section 831(b) is somehow doing something wrong. This flies in the face of the underlying Internal Revenue Code and is contrary to recent actions taken by Congress as outlined in the *PATH Act*, provisions of which the IRS has yet to issue guidance on nearly 5 years after enactment, and despite numerous congressional inquiries.

While SIIA and its members appreciate the need to identify abusive captive structures, we can all agree that the timing and rationale behind the recent IRS Letter request is simply wrong. America's businesses deserve better. If the IRS is serious about halting certain abusive practices, our longstanding and ongoing request for clarifying guidance and to have a productive dialogue still stand. In the meantime, we respectfully request that a revocation of the IRS Letter be issued, and a suspension of all audit activity undertaken until the National Emergency Declaration is withdrawn.

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If you have any additional questions or would like to discuss this further, please do not hesitate to contact me at (202) 595-0642 or [rwork@siia.org](mailto:rwork@siia.org).

Sincerely,

A handwritten signature in blue ink that reads "Ryan C. Work". The signature is written in a cursive, slightly slanted style.

Ryan C. Work  
Vice President, Government Relations  
Self-Insurance Institute of America, Inc.

CC:

Hon. David J. Kautter, Assistant Secretary for Tax Policy, U.S. Department of the Treasury  
Mr. Michael J Desmond, Esq., Chief Counsel, Internal Revenue Service  
Ms. Martha Walker, Program Manager, Internal Revenue Service  
Ms. Bridget T. Roberts, Acting National Taxpayer Advocate

Attachment:

Internal Revenue Service Letter 6336 (3-2020), March 20, 2020



Department of the Treasury  
Internal Revenue Service  
LB&I

Date:  
3/20/2020  
Taxpayer ID number:  
  
Telephone number:  
  
Response due date:  
5/4/2020

## Micro-Captive Insurance

Dear :

### Why we're writing to you

We have information that you've taken a deduction or other tax benefit related to micro-captive insurance on a prior year tax return and disclosed pursuant to Notice 2016-66 and Notice 2017-08.

Several recent U.S. Tax Court decisions have confirmed that certain micro-captive arrangements are not eligible for claimed Federal tax benefits. We're notifying you regarding IRS compliance activity in this area so you can make informed decisions about claiming tax deductions for micro-captive insurance premiums. The IRS is increasing enforcement activity in this area and has deployed several examination teams to open additional examinations of returns that included micro-captive insurance transactions. Examinations may result in full disallowance of claimed micro-captive insurance deductions, inclusion of income by the captive entity, and imposition of applicable penalties.

### What you need to do

If you're no longer claiming deductions or other tax benefit for any micro-captive insurance transactions covered under Notice 2016-66 on your Federal income tax returns, please notify us by sending a letter to the address shown above. You must send it by the response due date shown at the top of this letter. This written notification must include:

- A signed penalties of perjury statement (see below),
- The last tax year in which you claimed deductions or other tax benefit for micro-captive insurance premiums, and
- If applicable, the date you ceased participating in the micro-captive insurance transaction.

If you continue to participate in a micro-captive insurance transaction covered under Notice 2016-66, you must continue to disclose your participation in the transaction.

Before you file your 2019 Federal income tax return, we recommend you consult an independent, competent tax advisor on the proper treatment for past and future tax years and consider your best options for any improperly claimed deductions or other tax benefit, including filing amended returns. For more information, visit [www.irs.gov/filing](http://www.irs.gov/filing). You can find tax forms or publications by visiting [www.irs.gov/forms-pubs](http://www.irs.gov/forms-pubs) or calling 800-TAX-FORM (800-829-3676).

We'll take your actions in response to this letter into account when considering future compliance activity related to your micro-captive insurance arrangement.

### Penalties of perjury statement

I, \_\_\_\_\_, declare under penalties of perjury that I have examined this entire document, including all attachments and accompanying statements, and that the enclosed is true, correct, and complete. I also understand with respect to any submission that the IRS reserves the right to make further contacts with me and my representatives to clarify any written explanation or any other documents. Statements and documents sent under this option will be checked against other sources for accuracy.

Last tax year in which I claimed deductions or other tax benefit for micro-captive insurance premiums:

\_\_\_\_\_

Date I ceased participating in the micro-captive insurance transaction (if applicable):

\_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

### If you need to file an amended return

If you're filing an individual amended return, write "Microcaptive" at the top of the first page of the Form 1040X and mail the amended return to:

Internal Revenue Service  
2970 Market Street  
Philadelphia, PA 19104

If you're filing a business amended return:

- If you're filing on paper, write "Microcaptive" at the top of the first page of the amended return and mail to the address listed in the instructions for the amended return.
- If you're filing electronically, include "Microcaptive" when explaining the reasons for the changes.

### If we don't hear from you by the "respond by" date

We may refer your return for examination. Please be aware that underpayments of tax are subject to interest and penalties.

**Someone may represent you**

If you want someone to represent you in this matter, send a completed Form 2848, Power of Attorney and Declaration of Representative, with your response to the address shown above.

**Additional information**

This isn't an audit of your tax return or of your failure to file one. This inquiry doesn't constitute an examination under Internal Revenue Code Section 7605(b) or a contact regarding an examination under Treasury Regulation 1.6664-2(c)(3)(i)(A) for purposes of defining a qualified amended return. If you're currently under audit or have other matters before the IRS, you should consult with your examiner or point of contact.

If you have questions, call the hotline telephone number shown at the top of this letter and leave a message. We'll respond to all messages within five business days.

Thank you for your cooperation.

Sincerely,

*Martha Walker*

Martha Walker  
Program Manager