

INSIDE the Beltway

Written by Dave Kirby

ERC Group Initiates Campaign to Address Federal, State Issues

A broad-based campaign to support enterprise risk captives (ERC) across the spectrum of federal and states-based legislation and regulation was initiated in a special meeting of SIIA's ERC Working Group in Washington, DC.

ERCs are those captive insurance companies formed primarily by owners of small to medium-sized businesses to protect against unusual – but potentially devastating – risks for which traditional insurance is not available or inordinately expensive. Many ERCs make an election under Internal Revenue Service code section 831 (b), recently amended in legislation that becomes effective in 2017, that allows an insurance company to receive annual premiums up to \$2.2 million free of federal taxation.

The ERC Working Group was first organized in late 2014 to serve as an advocate for ERCs. In February 2015, when the Senate Finance Committee drafted legislative language that SIIA believed would damage the ability of smaller businesses to use ERCs to protect against potential risks, the ERC Working Group mobilized. SIIA then submitted to Congress several drafts of suggested language. While the 2015 end-of-year “tax

extender” bill ultimately included language that will impact captive formation and operation in its limitations on familial ownership, new asset valuation reporting and other definitional changes, it also includes other opportunities for the industry to better evolve, including increasing the allowable annual premium to \$2.2 million from \$1.2 million.

“We set out both short- and longer-term objectives for our ERC support campaign,” said **Jeff Simpson**, chairman of SIIA's Alternative Risk Transfer Committee and of the ERC Working Group. “Our immediate urgency this year will be to gain clarification from Congress and the IRS in how the new small captive rules will be interpreted and implemented. Clarity will be needed for operation of all ERCs beginning next January 1.”

The Working Group sketched out an approach to Congress and the IRS that will become tactical and more proactive in the coming months. “We have successfully facilitated meetings for our ERC group with the Senate Finance Committee and other Congressional venues, as well as with key members of the Treasury Department and IRS and we look forward to continuing to do that,” said **Ryan Work**, SIIA's Vice President of Government Relations, who organized the ERC Working Group meeting.

Another point of urgency for supporting ERCs is the current tax court case, *Avrahami vs. Commissioner*. This is the first court case that tests IRS interpretation of rules governing ERCs. Testimony has been completed and briefs filed – including an amicus brief by SIIA – and a decision is anticipated by summer.

“That case will have a great bearing on both operation and regulation of ERCs in the future and it will provide focal points for SIIA advocacy of additional protective legislation or regulatory relief,”

said ERC Working Group chairman Simpson.

A longer-term objective of the ERC support campaign will be to strengthen the standing of ERCs among the insurance industry, the business community and the general public. "If we can raise the level of appreciation for the many positive aspects of ERCs, that will go a long way in making them better understood by lawmakers and regulators," Simpson said.



The ERC Working Group also addressed the importance of extending support for small captives to state legislators and regulators. States collectively present a highly complex environment that includes those which serve as captive domiciles, those that appear uninterested in the captive industry and those that actively oppose captives. The wild card in dealing with state insurance regulation is the National Association of Insurance Commissioners which has exhibited resistance to captives.

"Think of our job in supporting captives in the federal government and multiply that by 50 states, plus the District of Columbia and U.S. territories," said **Adam Brackemyre**, SIIA's Vice President of State Government Relations.

The ERC Working Group also discussed a potential initiative between SIIA and state regulators to establish "best practices" for regulating ERCs. "The more that industry and the states coalesce around sound ERC operational standards, the better it will be for all parties, including the IRS, which has been skeptical that sound practices are being applied to ERC operation and regulation," Simpson said.

A publicity campaign will also be undertaken by SIIA to create more positive coverage for ERCs in order to better tell the positive story of how 831(b) and the industry in general are making a difference.

"This campaign demonstrates the fact that SIIA is the only industry organization that offers members the capability and willingness to support small business captives with government at all levels," Simpson said. ■

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