

INSIDE the Beltway

Written by Dave Kirby

SIIA Moves Needle on Enterprise Risk Captive Legislation, Congress Moves Forward

Many small to mid-size companies and the captive insurance industry are still assessing more restrictive rules on small captives operating under IRS 831(b) status contained in hurried 2015 “tax extender” legislation passed by Congress just before the end of last year.

After nearly a year of close consultation with Congress by SIIA and its allies in support of enterprise risk captives (ERC), the captive industry was surprised by bill language that largely set aside common-sense modifications proposed by SIIA, business organizations and regulators. The bill language affecting ERCs had never been circulated or seen publicly before being released just days before a scheduled vote, despite numerous conversations and meeting with policymakers and their staff.

SIIA’s discussions with Congress about ERCs were prompted last February by draft bill language introduced before the Senate Finance Committee intended to curtail possible abuses of the tax law for purposes of estate planning or capital accumulation beyond the scope of anticipated risks. For most of the year SIIA’s volunteer ERC Task Force, staff and lobbyists were engaged

in discussions with Congress that resulted in a succession of three documents suggesting bill language or modifications.

While these proposed modifications helped to educate policymakers and move the conversation forward, Congress nevertheless proposed further sweeping restrictions with what many believe will cause unintended consequences.

The new law provides an increase of allowable annual captive premium tax deductions from \$1.2 million to \$2.2 million but will provide major challenges to captive formation and operation in its limitations on familial ownership, new asset valuation reporting and other definitional changes.

Having been part of the process throughout and commenting on the outcome, **Ryan Work**, SIIA’s Senior Director of Government Relations, noted, “We have made progress and moved the needle substantially from where we began last February, particularly in overcoming some of the proposed ERC restrictions that were much more onerous. In addition, we were able to discuss and educate policymakers and their staff on captive issues that most of them had never encountered.” Work said that effort established an industry presence and legislators’ awareness that will continue to gain ground and pay dividends into the future.





Upon learning of the tax extender bill threat last month, SIIA immediately mobilized the ERC Task Force (listed on the right) to begin pyramiding contacts to members of Congress from themselves, clients, colleagues, state captive associations and state insurance regulators.

“Our members responded with immediate response and firepower,” Work said. He guided the grassroots network from SIIA’s Washington DC office and provided daily updates, briefing documents and strategic planning.

Jeff Simpson, chair of the ERC Task Force, said,

I know that SIIA and its allies are being heard in Washington. I’m very impressed with how quickly SIIA hit the ground running and I’m very impressed with the greater industry in aggressively dealing with the legislative threat in an organized and civil manner.

As an example of how support for ERCs has broadened, Simpson said he attended an on-line webinar on the tax extender bill by the American Bar Association that drew the largest attendance of any ABA event he had witnessed.

SIIA’s quick response in attempting pushback to the bill language was enabled by advance planning, in Simpson’s view. “We started the ERC group just over a year ago, before a significant government threat against small captives surfaced,” he said. “If we hadn’t created that structure to advocate for the industry, we couldn’t have responded in time to head off some of the worst legislative threats.” At one time, draft bill language would have prohibited ERCs from accessing reinsurance.

SIIA intends to continue this year its interface with Congress in support of ERCs and has already set meetings with key Members and staff to consider more flexible modifications to the rules. ■

Further information will be available from Ryan Work in SIIA’s Washington office at rwork@siaa.org or (202) 595-0642.

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