

INSIDE the Beltway

Written by Dave Kirby

SIIA Members Working to Clarify New Law Governing Small Captives

These months' lazy, hazy days of leisure are only a myth to SIIA members and staff who are working hard through the hot and humid Washington, D.C. summer to solve federal tax questions that could impede the operation of many small business captive insurance companies beginning in 2017.

Comprised of members of the Enterprise Risk Captive (ERC) Working Group along with DC-based staff, SIIA continues to meet at every opportunity with Congress, including the Joint Committee on Taxation (JCT), as well as key Internal Revenue Service (IRS) officials. JCT is comprised of members of the House and Senate with equal Republican and Democratic representation. It monitors federal legislation and assesses the impact of Congressional bills.

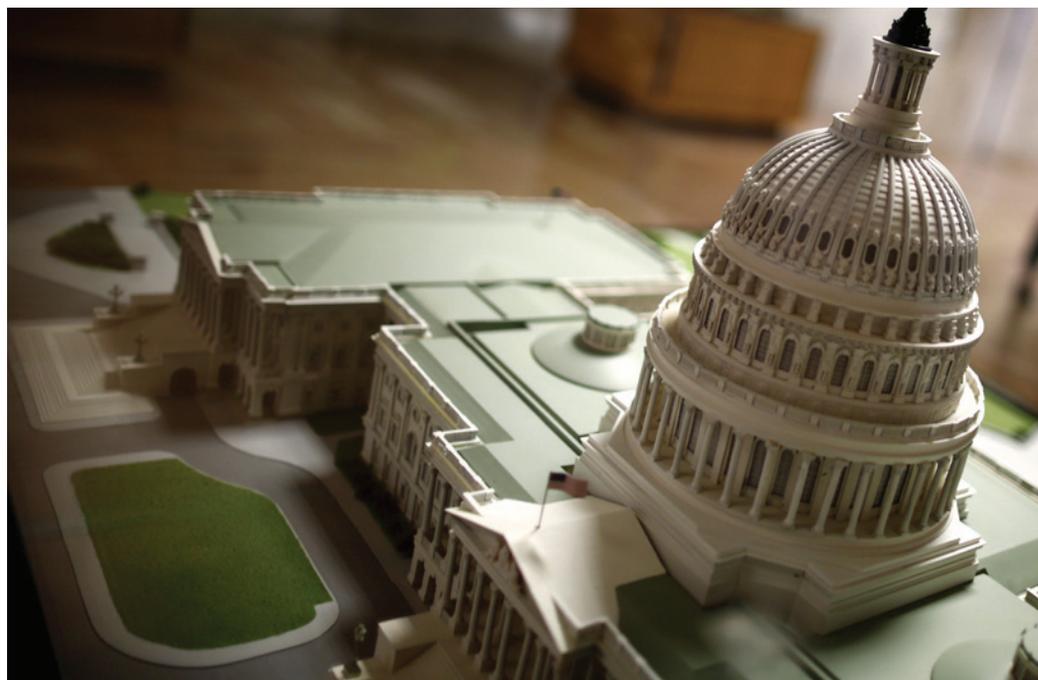
SIIA's goal is to solve some problems that arose along with significant improvements when Congress included new rules affecting enterprise risk captives (ERC) in the end-of-2015 "tax extender" bill last December. ERCs are those small and medium-sized captives that businesses set up to protect against unusual but possibly devastating risks for which traditional insurance is not available

or inordinately expensive. Many ERCs make an election under the Internal Revenue Service code section 831 (b), which was amended by December's bill.

The good news in that bill is that ERCs operating under 831 (b) will be allowed to receive annual premiums of up to \$2.2 million in 2017, an increase from \$1.2 million which is tied to inflation moving forward. More problematic and the subject of SIIA's current interest, is legislative language that negatively impacts legitimate captive formation and operation with limitations on familial ownership,

asset valuation reporting and other definitional changes that SIIA insists require clarification.

"Much of the captive industry is flying blind right now on implementation of this new legislation," said **Ryan Work**, SIIA Vice President of Government Relations. "There remain a number of points in the new law that require clarification in order for captives to be certain of complying. Captive policies are being written now to go into effect in 2017, but the industry can't be sure how to proceed without needed guidance."





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Jeff Simpson, chairman of SIIA's Alternative Risk Transfer Committee and of the ERC Working Group, offered capsule examples of the new law's needed clarifications.

"The law speaks to calculated percentages of interest in specified assets, but we don't know if that means interest on stocks, loans, fair market value, adjusted basis or something else," he said. "Another passage talks about 'policy holders' but we don't know if that would include reinsurers. Relating to family businesses, if the husband owns the business a wife or family group couldn't share ownership of the captive. We don't know if that's really the intent of the law.

"The best way to eliminate uncertainties would be for Congress to make the technical corrections to provide guidance to the IRS," Simpson said.

"Taxpayers want to comply with the law, but they don't know how to do that at this point."



SIIA members and staff realize that the smoke and turmoil of an election year is not the ideal time to ask for technical corrections from Congress and federal agencies. "Perhaps either Congress or the IRS could agree that the law is not clear and suggest its implementation be delayed for a year," Simpson said.

He indicated that SIIA's advocacy has not been met with monolithic resistance: "There is a sense from the House and Senate of acceptance of small captives as a valid benefit to businesses. And the IRS seems to acknowledge that properly managed captives have an important role. Hopefully, further effort will give us the guidance we need to proceed."

Simpson noted, "SIIA has proven that it can be heard in Congress and it can do as well as anyone can."

ERC Working Group member **Dana Sheridan**, general counsel and chief compliance officer of Active Captive



Management of Laguna Hills, California, notes that "It's also important to remember that Section 831(b) was not just created to

provide tax benefit to farm mutuals, history tells us otherwise. The future can be very bright if we all remember why captives were – and still are – so necessary in the first place and we all do our part to ensure that small captives follow insurance industry best practices. Clearly, tax strategy with regard to small captives is in the media spotlight, but I hope that we don't lose sight of the fact that an insurer should be judged by the quality of its insurance business, not its ability to make a tax election."

SIIA's pursuit of tax law clarity on behalf of the small captive industry is likely to continue through the current session of Congress. ■

SIIA members who wish to join the campaign to advocate for self-insurance on the federal level are welcome to contact Ryan Work in the Washington office at rwork@siaa.org or (202) 595-0642.