INSIDE the Beltway

written by Dave Kirby

SIIA Members Request Rescission of IRS Captive Reporting Rule in Letter to Treasury, Meetings with Congress

SIIA members converged on Washington, DC, last month to brief Congress on a recent request to the U.S. Department of Treasury to revisit IRS Notice 2016-66 which has caused havoc among many small to medium sized businesses utilizing enterprise risk captives.

The Capitol Hill visits by members of SIIA's Enterprise Risk Captive (ERC) Working Group was the second wave of SIIA's industry advocacy following its appeal to Treasury Secretary Steven Mnuchin to include the IRS Notice on the list of federal regulations that cause undue hardship and regulatory burdens on American businesses. These regulatory burdens, expected to be included in a report by the Treasury Department later this summer, were requested by President Trump in an April executive order.

Members of SIIA's ERC Working Group provided briefings to Congress on unfair elements of the IRS Notice affecting captive insurance companies that are organized under Revenue Code Section 831(b).

"It is critical for our captive members and participants across the industry to tell their stories directly to policymakers," said Ryan Work, Vice President of Government Relations. *"These stories are making clear the costly and unnecessary regulatory burden the Notice is placing on well intentioned taxpayers."*

SIIA provided data to Congress and the Treasury that included the financial burdens of information imposed by IRS Notice 2016-66 on the small captive industry including:

- The average cost for a captive to complete its Notice reporting was $9, 257, compared to a typical range of $1,000 to $4,000 to file a federal tax return.
- The actual time incurred by SIIA members to file the forms required by the Notice averaged 50.97 hours per captive, compared to the IRS estimate of 10 to 16 hours for record-keeping and 6.25 hours for preparation.
- The overall cost of Notice compliance by SIIA members alone totaled nearly $23 million.

SIIA members engaged in the captive industry contend that the onerous reporting required by the IRS Notice arose from the agency's stated contention that some captives are operated primarily for purposes of tax management, estate planning or executive succession rather than pure risk management.

"By this Notice, the IRS is handicapping the vast majority of properly operated captives," said Doug MacGinnitie, CEO of River Oak Risk of Atlanta, who was among the ERC Working Group members participating in the visits to House and Senate offices last month.

MacGinnitie said he has noticed a somewhat chilling effect on captive formation following implementation of the IRS Notice.

"This suggests to the business community that there's something inherently wrong about setting up a captive," he said. *"The IRS is painting every small captive with the same brush."*

MacGinnitie said it was important for members of the industry to take their concerns directly to Congress in events such as last month's. ***"SIIA adds a lot of value as it brings members of our industry together to advocate for a very great number of captive companies, managers and business owners,"*** he said.

Rick Eldridge, CEO of Intuitive Companies of Denver, also participated in the meetings with Congress. His view is that the majority of the information required by the IRS Notice already is available to the agency if it were managed more efficiently.

"We are happy to comply with reasonable requests by the IRS in its effort to regulate our industry but its method to accomplish that is overly burdensome," Eldridge said. "Most of the information the IRS is asking for already exists in captive companies' tax returns, but isn't available for quick correlation. For example, the Notice required paper forms (as opposed to electronic) to be sent to the IRS in Ogden, Utah, in an operating methodology apparently from the 1980's.

"Rather than reviewing data the IRS has on hand within the annual tax returns and their required exhibits, the IRS has asked us, in effect, to repeat the information in new forms that are required from captive insurers, each insured entities' owners, accountants, actuaries, managers and any other material advsiors," Eldridge noted.

Advocacy by the captive industry initially resulted in an extension by the IRS for filing new forms under the Notice from January to May this year. Underscoring the onerous burden of the Notice, a number of state captive associations are also following SIIA's lead in reaching out to both Treasury and their own congressional delegations. Now SIIA hopes that the burdensome effects of the Notice can be ameliorated or repealed through regulatory or executive action.

SIIA members with inquiries about federal government relations issues are welcome to contact Ryan Work at rwork@siia.org or (202) 595-0642.

Doug MacGinnitie