Leading the Political Advocacy Charge for Captives

SIIA Active in Protecting & Promoting this Important Segment of the Self-insurance Marketplace

By Ryan Work

With Congress easing itself in to the fall legislative session, the advocacy team at the Self-Insurance Institute of America, Inc. (SIIA) would like to provide a brief update on our regulatory and legislative activities on behalf of the captive insurance industry this year.

Notice 2016-66

In November of last year, the Internal Revenue Service issued Notice 2016-66 ('the Notice'), which ultimately amounted to a request for information on captive insurance structures, owners and shareholders. SIIA has been active not only on pushing back on the Notice, but collecting information on the burden and cost it has posed for taxpayers. While not ultimately successful in rescinding the Notice, SIIA was able to delay the initial filing deadline from January 30th to May 1st, 2017.

Rick Eldridge, Jeff Simpson and John Capasso meeting with Sen. Tom Carper's office (D-DE)

Subsequently, SIIA spearheaded comment letters formally requesting that, due to its burden on taxpayers, that Notice 20166-66 be considered as part of several Executive Orders (EO 13789, EO 13777) issued to identify regulatory burdens:

It remains our belief that the Notice is a taxpayer burden and should be identified by the Administration as such. Just as an example, a survey of participating SIIA members concluded that the cost to comply with the Notice totaled over $21 million and 122,500 total hours. These numbers far exceed the annual cost to prepare the Form 1120PC federal tax return, which typically ranges from $1,000 to $4,000 a year.

In fact, the IRS instructions for Form 8886 estimate that it takes a taxpayer 10.16 hours for recordkeeping and 6.25 hours for preparation of the forms. Similar instructions for Form 8918 estimate that it will take a taxpayer 9.79 hours for completion. These estimates are far below the actual total incurred time by SIIA members of 50.97 hours per captive.

Throughout this time, SIIA has been engaged with Congress and Treasury in asking for needed revisions to the Notice. In fact, a growing number of Members of Congress have written letters of concern regarding the Notice due to SIIA member discussions. While not likely to be rescinded, SIIA is strongly advocating for changes to the Notice related to filing and disclosure, including the annual filing requirement, among other things. To accomplish this goal, SIIA has held numerous meetings with the IRS and Treasury on this issue, and dozens of meetings with Members of Congress and their staff.

PATH Act

SIIA played a crucial role in the ultimate outcome of the Protecting Americans from Tax Hikes Act of 2015 ('PATH Act') provisions passed by Congress back in 2015 related to IRC 831(b), which contained a threshold increase to $2.2 million pegged to inflation, as well as restrictions on the use of captives for estate planning purposes. Since that time, we have engaged with the IRS in urging implementation of the new law, as well as to begin the rulemaking procedures outlined in the PATH Act. These efforts were supported by a broad industry wide-stakeholder letter from state captive associations across the country.

SIIA Members Jerry Messick, John Capasso, Senator Heller (R-NV), Mike Lynch, and Ryan Work

In addition, SIIA worked with the Joint Committee on Taxation (JCT) in Congress to introduce needed clarifications to the PATH Act, which we feel confident will be included in future tax legislation. These clarifications will ease the implications of the PATH Act on those captives operating in the right way, helping to narrow the scope of the estate planning limitations to those who are truly using it for such a purpose.

Tax Reform

In the wake of health care reform attempts, Congress has now turned its attention to tax reform, with a general timeline of consideration this fall. This is important to watch pertaining to the treatment of various business deductions and IRC sections related to tax planning.

Recently, SIIA was able to sit down with Chairman Brady as he discussed tax reform. While details were not available at that time, it will likely contain a two-part framework that contains historically low corporate and individual tax rates, along with the simplification of the tax code. With the lower overall rates and simpler code, it seems likely an overall corporate tax rate of somewhere between 24-28% may be achieved, though in return many one-off deductions are likely to go to the wayside. A third tax reform bucket includes a reorganization and modernization of the Internal Revenue Service, which will move separately. Congressional leadership continues to believe they will move tax reform throughout this fall, with more details to be filled in through legislation that will be drafted by the Ways and Means Committee.

General Captive Legislation

SIIA also tracks and advocates for other federal legislation regarding the captive industry. A few key legislative proposals include:

FHLB Participation

The Housing Opportunity Mortgage Expansion (HOME) Act was reintroduced in the House in June of this year which, if enacted, would restore the ability of captives to participate in the Federal Home Loan Bank System if they joined before the Federal Housing Finance Agency (FHFA) first proposed rule

Captive Insurers Clarification Act

Because of difficulties posed in language included in the original Dodd-Frank law, legislation has been proposed in the past, and likely to be reintroduced sometime this Congress, clarifying that captives be excluded from 'nonadmitted insurers' definition for purposes of the law. This clarification means that captive insurers would be taxed and regulated by the state of domicile, not necessarily where the business's corporate headquarters is located.

As you know, the captive policy, legislative and regulatory space remains busy on both the federal and state level. Throughout this complex environment, SIIA remains engaged on behalf of its members to offer a unique and unified industry voice. We also appreciate the hard work of all our captive members in engaging state and federal policymakers and regulators. ■

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