



# SIIA ENDEAVORS

## SIIA UNITES WITH CAPTIVE INDUSTRY ON U.S. SUPREME COURT CASE

**A**s part of an unprecedented captive insurance industry coalition, the Self-Insurance Institute of America, Inc. (SIIA) has joined with nearly two dozen captive insurance organizations to file an amicus brief before the U.S. Supreme Court in the case of CIC Services LLC v. IRS ('CIC'). CIC Services, a SIIA member, is a Knoxville, TN-based captive manager.

This diverse coalition formed with the goal of expressing broad captive insurance industry concerns through a U.S. Supreme Court amicus brief supporting the CIC Services case to overturn a decision by the 6th Circuit Court that challenged IRS authority under Notice 2016-66 ("the Notice").

SIIA has been active in opposing the administrative burden of the Notice since its implementation, discussing concerns with the U.S. Department of the Treasury and a number of congressional stakeholders.

The Notice imposes requirements and potential penalties on owners, advisors and managers who participate in certain captive transactions, going back up to 10 years.

These taxpayers are being forced to comply with the Notice regardless of whether their captive insurance arrangement contained any of the characteristics of concern identified by the IRS, and were offered no meaningful opportunity to provide comment or feedback prior to the Notice's immediate implementation in 2016, nor the ability appeal the filing requirements until paying a penalty.

The coalition amicus brief focuses on three key arguments at issue in the CIC case. First, that the Court should consider the heavy regulatory burden and harm being caused to taxpayers, namely the captive insurance industry.

The Notice requires taxpayers to report duplicative information and imposes an undue financial burden to small- and medium- sized businesses, all for little to no benefit to the IRS. These requirements have come at a tremendous cost to taxpayers.

Second, the Administrative Procedures Act ("APA") requires federal agencies to allow for a meaningful opportunity for public comment on proposed rules. The industry brief argues that the IRS did not comply with the APA, rather issuing the Notice without offering public comment and review.

Despite the lack of a formal comment and review process, SIIA and other coalition members nonetheless provided comments to the IRS that went unheeded.

Third, the coalition argues that the Anti-Injunction Act ("AIA") prohibition on preventing challenges to the IRS should not extend to reporting requirement, such as are imposed by the Notice.

A link to the full coalition brief can be found [here](#).

While SIIA continues to support appropriate IRS actions to curb abusive practices, it objects to the unnecessary regulatory burdens being imposed on taxpayers without a formal rulemaking or appeal process, contrary to law and Congressional intent.

"SIIA has been a leading advocate against the regulatory burdens being imposed by the IRS under Notice 2016-66, among other actions, and applauds CIC Services for bringing this case before the court," stated SIIA President & CEO Mike Ferguson. "In joining with a number of industry partners, this brief demonstrates our ongoing commitment to advancing captive insurance through education, reducing regulatory burdens, and allowing American businesses to self-insure risk."

SIIA looks forward to the U.S. Supreme Court hearing this case during the upcoming session, beginning in November, and appreciates the opportunity to file an amicus brief to the Court. It is important to note that while the CIC case is specific to captive insurance companies electing under IRC 831(b), the unnecessary and over broad regulatory actions of the IRS are of concern to both the broader captive insurance industry, and to U.S. business in general.

In addition to SIIA, the broad industry coalition is comprised of 22 other national, state and territorial captive domicile associations, including: Alabama, Arizona, the Captive Insurance Company Association (CICA), Connecticut, Delaware, the District of Columbia, Georgia, Hawaii, Kentucky, Missouri, Montana, Nevada, New Jersey, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, Utah, the U.S. Virgin Islands and Vermont. ■

For more information, please contact Ryan Work, SIIA vice president of federal government relations, at [rwork@siia.org](mailto:rwork@siia.org).