

## Lawmaker Requests Delay of 'Micro-Captive' Reporting Duties



### Snapshot

- Senate tax-writer requests 90-day reporting extension for entities subject to Notice 2016-66
- Says IRS needs to take more time to review taxpayer comments, concerns

*By Allyson Versprille*

A Senate Finance Committee member asked the IRS for a 90-day extension on new reporting and disclosure requirements that affect a subset of insurers.

The Internal Revenue Service in November issued Notice 2016-66, which identified certain captive insurance arrangements that qualify under tax code Section 831(b), and any similar structures, as "transactions of interest." Applicable Section 831(b) arrangements, also referred to as "micro-captives," must report and disclose information to the IRS or face penalties.

"Based on concerns I have heard from my constituents, I request a simple 90-day extension of the date for disclosure, reporting and potential penalties imposed under the Notice, which in many cases would otherwise be January 30, 2017," Sen. Johnny Isakson (R-Ga.) said in a Dec. 20 letter to IRS Commissioner John Koskinen, released Dec. 21 under the Freedom of Information Act.

The IRS imposed these new obligations as a way to get a handle on which micro-captive structures should be identified as tax avoidance arrangements. The action was a significant step in cracking down on abusive Section 831(b) transactions, which have been on the agency's "Dirty Dozen" list of tax scams for the past two years.

"While I understand the IRS intends to obtain more information about Transactions of Interest regarding 831(b) micro-captive insurance arrangements, which is a reasonable goal, the notice imposes extensive reporting and disclosure requirements for a large group of taxpayers in this industry," Isakson said.

#### **Taxpayer Comments**

"Furthermore, the fact that the taxpayer comment deadline regarding the Notice is January 30, 2017, generally the same day the Notice's new reporting requirements go into effect, does not allow the IRS time to consider taxpayer comments prior to the effective date of the reporting requirements," he said.

Captive insurance companies are formed as subsidiaries to insure the risks of a corporate parent. One of the main benefits is that a captive can insure risks that otherwise can't be insured because it would be too expensive or coverage isn't available in the commercial marketplace.

The IRS's concern is that some businesses are creating captives to insure against risks that are so improbable that the entities never have to pay claims and the premiums return to the business owners or heirs with little or no tax.

"While I fully support compliance with the federal tax code and eliminating abuse and tax fraud, imposing disclosure requirements on a large number of small and medium-sized businesses that use captive insurance to insure their own risk before the IRS has carefully reviewed such taxpayers' comments is unfair and violates a basic principle of administrative process," Isakson said.

#### **'PORCs Aren't Captives.'**

In a Dec. 19 letter, also released Dec. 21 under FOIA, Andrew J. Weill of the Law Offices of Weill & Mazer requested that the IRS publish guidance to clarify that producer-owned reinsurance companies (PORCs) aren't subject to Notice 2016-66.

He said the phrasing regarding which arrangements are considered transactions of interest is too broad and could be interpreted to include a large number of PORCs, which "accept unrelated third party risk rather than a parent or sibling company's risk."

"These companies are in the unique position of having previously been the subject of IRS scrutiny and evaluation," Weill said. "They should not be the subject of this Notice."

Requiring reporting by these companies—which aren't micro-captives—"will lead to thousands of submissions to the IRS that have little, if any, resemblance to the situations described" in the notice, he said.

To contact the reporter on this story: Allyson Versprille in Washington at [aversprille@bna.com](mailto:aversprille@bna.com)

To contact the editor responsible for this story: Meg Shreve at [mshreve@bna.com](mailto:mshreve@bna.com)

**For More Information**

Text of Isakson's letter is at <http://src.bna.com/kV6>.

Text of the Weill & Mazer letter is at <http://src.bna.com/kV5>.