

November 2016

The IRS issued a notice identifying reporting requirements under the authority granted to them by the enactment of the Protecting Taxpayers from Tax Hikes Act (“PATH”) of 2015 for certain insurance companies electing to be taxed solely on investment income under Section 831(b). As we outlined in our earlier updates, the pertinent parts of the PATH Act increase the Section 831(b) premium limit to \$2.2m and establishes new diversification eligibility requirements for making the 831(b) election. Neither we nor other industry professionals view this notice as an unexpected development.

The notice identifies 831(b) captives as a “transaction of interest” (meaning one that has the potential for abuse). Please note that a “transaction of interest” is not the same, nor in the same realm, as a “listed transaction” (a “listed transaction being one that has clearly been identified as abusive from a Federal income standpoint).

As a transaction of interest, these must be disclosed to the IRS on Form 8886. These disclosures are due to the IRS by 1/30/2017 (90 days from the release of the notice as provided for in the Regulations). The disclosure requirements apply to captives making the 831(b) election in the past 5 years and applies to all of those years if (1) the claims and related expenses are less than 70% of the premiums earned less policyholder dividends; or (2) the captive has made a related party loan or otherwise provided funds to related party in a non-taxable transaction.

So...what has to be disclosed? The following for the 5 year period:

1. How the taxpayer became aware of the 831(b) captive idea;
2. Which of the above criteria requires the captive’s disclosure;
3. Which domicile authorized the captive to transact business;
4. Description of all coverages provided by captive;
5. Description of the process for determining the premiums paid to the captive, including the name and contact info of any actuary or underwriter who assisted in these calculations;
6. Description of any claims paid or reserves posted by the captive;
7. Description of the assets held by the captive (types of investments).

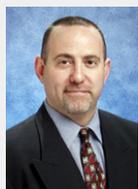
This will be a filing BSW and ERS will make on your captives behalf.

Please note that these filing requirements will likely involve the vast majority if not all of the micro-captives that utilize the 831(b) election. Based on this, as well as the fact that there is a 5 year lookback for reporting, it is clear that the IRS will be inundated with information. This does not mean that any of the captives included are under examination nor does it necessarily mean that they will be examined. It is merely another filing requirement. It is noteworthy that this is not the first time that the IRS has required taxpayers to engage in a major “documentation” exercise, and those efforts did not result in a significant increase in IRS examination activity.

The passage of the PATH Act indicates clear Congressional support for those captives utilizing the Section 831(b) election, and the notice itself explicitly states that there are legitimate risk financing captives taxed in accordance with Section 831(b).

As always, please call with any questions.

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