

Captive Insurance Industry Should Be Aware of State Reporting Obligations for Transactions of Interest

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On November 1, 2016, the Internal Revenue Service (“IRS”) issued Notice 2016-66, identifying certain transactions relating to “micro-captive” insurance companies as “transactions of interest.” This designation brings covered captive insurance companies into a Federal reporting regime requiring participants in such transactions, as well as their advisors, to meet certain one-time and annual filing obligations. ***Participants and advisors should also be aware that several states have similar reporting obligations, and failure to comply with the state reporting regimes can lead to significant penalties.***

Under the Federal reporting regime, participants in micro-captive transactions are required to make a one-time filing of Federal Form 8886 with the IRS Office of Tax Shelter Analysis (“OTSA”) and to file Federal Form 8886 annually with the participants’ Federal tax returns. “Material advisors” must make a one-time filing of Federal Form 8918 with OTSA and file Form 8918 if the advisor meets certain reporting thresholds with respect to additional transactions.

The one-time filings were originally required to be filed with OTSA by January 30, 2017. However, Notice 2017-08, issued on December 29, 2016, extended the one-time filing deadline to May 1, 2017. The deadline extension is good news for the captive insurance industry, as it gives participants and material advisors more time to prepare the required Federal disclosures. Participants and material advisors should also use the additional time to ensure compliance with state reporting regimes.

Approximately a dozen states, including California and New York, have reporting regimes that largely mirror the Federal regime. Under state legislation, if a transaction is designated a transaction of interest for Federal reporting purposes, the transaction is also a transaction of interest for state reporting purposes. In general, if a transaction has a “nexus” with one of these states (e.g. a participant is a resident of a state that requires reporting), then the participants and material advisors may be required to meet certain reporting obligations in that state.

The content, form, and deadline for reporting vary amongst the states. However, each state imposes penalties on taxpayers that fail to timely or adequately file with the state. Participants and material advisors should therefore give due consideration to the state reporting requirements and use the next few months to ensure compliance with all applicable reporting regimes.

[Caplin & Drysdale’s Tax Controversy](#) attorneys have extensive experience with the reporting and recordkeeping regimes for listed transactions. If you have questions about this Alert, please contact:

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