

IRS Will Continue Captive Insurance and Syndicated Conservation Easement Examinations Despite Covid-19 Pandemic

April 27, 2020

In March 2020, the Internal Revenue Service announced the [People First Initiative](#), pausing many compliance actions during the COVID-19 crisis. For the next several weeks, the IRS continued to update and clarify its policies regarding the activities that would be placed on hold in an attempt to provide relief to taxpayers.

On April 14, 2020, the Commissioner of the Large Business and International Division (“LB&I”) published a [memorandum](#) titled “LB&I Compliance Priorities During the COVID-19 Pandemic,” which outlined compliance actions that will continue during the COVID-19 crisis. While other campaigns have been postponed, LB&I stated that it will continue active enforcement against section 831(b) captive insurance arrangements and syndicated conservation easements, although the examinations will operate without in-person contact.

Microcaptive Insurance Arrangements

Over the past several years, the IRS has made microcaptive insurance arrangement examinations a priority for the agency. At the end of March 2020, the IRS sent “[soft letters](#)” to taxpayers who had disclosed their participation in section 831(b) captive insurance arrangements identified as reportable transactions of interest. The soft letters request information regarding whether taxpayers are still participating in captive insurance arrangements and the last year in which a deduction or other tax benefit was reported. The original due date for the soft letter responses was May 4, 2020. However, on April 22, the IRS announced an extended deadline of June 4, 2020.

Syndicated Conservation Easements

Prior to the COVID-19 crisis, the IRS and the United States Senate Committee on Finance were investigating and scrutinizing syndicated conservation easement transactions. Taxpayers who participated in these transactions, and those professionals who arranged them, have been undergoing IRS examinations, receiving letters from the Finance Committee requesting information, and facing civil litigation. Based on the LB&I memorandum, we anticipate that the IRS will continue to open conservation easement examinations and may also send soft letters similar to those sent in the captive insurance context.

Next Steps

Although the IRS has deferred certain compliance actions, it has made clear that captive insurance arrangements and syndicated conservation easement transactions are a continuing priority. In fact, in January, the IRS [announced](#) that it would set up twelve new exam teams dedicated to auditing captive insurance arrangements, with the goal of auditing “thousands of taxpayers in the coming months.” We believe that the IRS will be using the captive soft letter responses to identify and prioritize those taxpayers that the IRS will audit in the next wave of new examinations.

Taxpayers should not delay in consulting their tax advisors to determine what options are available and most advisable in light of each taxpayer's overall situation, particularly those taxpayers that are not yet under IRS examination. An examination of a captive insurance arrangement or a syndicated conservation easement transaction is a burdensome and costly process that potentially may result in additional tax and significant penalties.

Attorneys in [Caplin & Drysdale's Tax Controversy](#) group have decades of experience representing individuals and businesses before the IRS. Our attorneys will continue to monitor federal and state policies related to the COVID-19 crisis as well as enforcement activity against captive insurance arrangements, and syndicated conservation easement transactions.

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