

Date: 02-Nov-16
From: Steve Leimberg's Estate Planning Newsletter
Subject: **FLASH: Jay Adkisson, Chris Riser & Dave Slenn on Notice 2016-66: IRS Issues Long-Anticipated Notice of Its Intent to Combat Real and Perceived Abuses Involving 831(b) Captive Insurance Companies Steve Leimberg's Asset Protection Planning Newsletter.**

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“The IRS has issued long-anticipated notice of its intent to combat real and perceived abuses of small captive insurance companies that have made the 831(b) election. Recognizing that many 831(b) captives are legitimate, and without sufficient information to determine captive transactions that amount to tax avoidance or evasion, the IRS has stopped short of designating all 831(b) captive arrangements as a ‘Listed Transactions,’ but has designated certain forms of 831(b) captive arrangements to be ‘Transactions of Interest.’”

Jay Adkisson, Chris Riser and Dave Slenn provide members with commentary on [Notice 2016-66](#).

Chris Riser and **Jay Adkisson** are partners in the law firm of **Riser Adkisson LLP**, and both practice in the area of captive insurance planning. Jay Adkisson is the former Chair of the American Bar Association's Committee on Captive Insurance and the author of Adkisson's Captive Insurance Companies.

David Slenn is a partner in the law firm of **Shumaker, Loop & Kendrick, LLP**, and is the current Chair of the American Bar Association's

Committee on Captive Insurance.^[i] Due to an editing error his law firm affiliation was listed incorrectly in a previous version of this newsletter and we apologize for any confusion.

Here is their commentary:

COMMENT:

The IRS has issued long-anticipated notice of its intent to combat real and perceived abuses of small captive insurance companies that have made the 831(b) election. Recognizing that many 831(b) captives are legitimate, and without sufficient information to determine captive transactions that amount to tax avoidance or evasion, the IRS has stopped short of designating all 831(b) captive arrangements as a "Listed Transactions," but has designated certain forms of 831(b) captive arrangements to be "Transactions of Interest."

The "Transaction of Interest" designation requires taxpayers and material advisors involved with captive arrangements that meet criteria in the Notice to file Form 8886 "Reportable Transaction Disclosure Statement" or Form 8918 "Material Advisor Disclosure Statement." Certain of the criteria (including those for non-mutual captives that have incurred insured losses and claims administration expenses of less than 70% of earned premiums over a five-year period) are so broad that most 831(b) captive insurance arrangements will fall within these Form 8886 and Form 8918 reporting requirements.

Persons who have participated in such 831(b) captive arrangements (particularly - but not necessarily limited to - captives, insureds, and owners of passthrough interests), in any taxable year after November 2, 2006 for which the period of limitations for assessment of tax is open, have until January 30, 2017 to file the required disclosure statements.

Taxpayers involved in an 831(b) captive insurance arrangement should contact their tax advisors immediately to determine whether their captive meets the Form 8886 filing criteria. Advisors involved with any 831(b) captive insurance arrangement should review the material advisor reporting requirements to determine whether they have disclosure and list maintenance obligations under IRC §§ 6111 and 6112.

Finally, persons involved in merger and acquisition transactions involving captives should carefully consider the impact of reportable transaction classification for both federal and state purposes and account for such accordingly in underlying transactional documents.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Jay Adkisson

Chris Riser

Dave Slenn

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CITES:

[IRS Notice 2016-66](#).

CITATIONS:

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