ALINK
Captive Insurance Services

Revenue Rulings and Case Law History

Relevant IRS guidance includes:

Revenue Ruling 78-338 – The Internal Revenue Service held that a Group Captive Insurance Company, where no shareholder's individual risk exceeded 5% of the total risks of the captive, had sufficient risk shifting and risk distribution.

Revenue Ruling 2001-31 - The Internal Revenue Service abandoned its "economic family theory" with respect to captive insurance transactions.

Revenue Ruling 2002-89 – Provides a safe harbor determination for risk shifting if a captive has more than 50% unrelated business risk.

Revenue Ruling 2002-90 – Reviews Brother and Sister Operating Subsidiaries and establishes the Rule of 12 for safe harbor purposes.

Revenue Ruling 2002-91 – If the liability of each company is no more than 15% of total risks insured by the captive, significant Risk Shifting and Risk Distribution exists.

Revenue Notice 2004-65 – The service stated that 831(b) no longer should be identified as "listed transactions" for purposes of disclosure, registration, and list maintenance requirements.

Revenue Ruling 2005-40 – Reviewed cases in which the captive underwrote a significant amount of third party risks, risk distribution and risk shifting were found to be present, even when the captive insurance companies that were wholly owned, or nearly wholly owned by its insured's.

Revenue Ruling 2008-8 – The service stated "Risk distribution necessarily entails a pooling of premiums, so that a potential insured is not in significant part paying for its own risks."

Revenue Notice 2008-19 – The Internal Revenue Service indicated it intended to set forth proposed guidance on when a protected cell company would be treated as an insurance company.

Proposed Regulations (REG–119921–09) – On September 14, 2010, the Treasury proposed that domestic series organizations (typically a series limited liability company – Series LLC) would be treated as a separate entity formed under local law and general tax principals.

Case Law History

2001 - United Parcel Service vs. Commissioner The Tax Court sides with UPS based on the economic-substance doctrine… 254 F.3d 1014 (11th Cir. 2001)

1997 - Kidde Industries, Inc. v. United States The Court held that premium payments made by brother-sister entities to the captive were currently deductible. Payments made by divisions of the parent corporation did not constitute insurance premiums deductible under IRC §162… 40 Fed Cl. 42 (U.S. Claims 1997)

1997 - Hospital Corp. of America & Subsidiaries v. Commissioner… T.C. Memo 1997-482

1995 - Malone & Hyde Inc. & Subsidiaries v. Commissioner… 62 F 3d 835 (6th Cir. 1995)

1993 - Ocean Drilling & Exploration Company v. United States Deduction allowed for premiums paid to a Captive that was a wholly owned subsidiary based on the following facts: 1) The insured faced recognized hazards. 2) Insurance contracts were written and premiums paid. 3) Unrelated parties purchased insurance. 4) Premiums charged were based on the commercial rates 5) The company's capitalization was adequate… 988 F 2d. 1135 (Fed Cir. 1993)

1992 - The Harper Group v. Commissioner Risk shifting and risk distribution were present where the captive received 29 to 32 percent of its premiums from unrelated parties. The captive arrangement was found to constitute insurance and payments made to the captive were deductible… 979 F.2d 1341 (U.S. App. 1992)

1992 - Sears, Roebuck and Co. and Affiliated Corporations v. Commissioner The Court recognized the premiums were determined at "arms length". 99.75% of premiums paid to Allstate came from unrelated insureds. The IRS's "economic family" argument was rejected.

1991 - Amerco Inc. & Subsidiaries v. Commissioner… 96 T.C 18 (1991)

1990 - Gulf Oil Corp. v. Commissioner… 914 F.2d 396 (U.S. App 1990)

1989 - Humana, Inc. v. Commissioner Held that the brother-sister captive arrangement constituted insurance and premium payments of the captive's brother-sister entities (but not its parent) were deductible… 881 F.2d 247 (6th Cir. 1989)

1987 - Clougherty Packing Co. v. Commissioner… 811 F. 2d 1297 (9th Cir. 1987)

1986 - Beech Aircraft Corp. v. United States… 797 F. 2d 920 (10th Cir. 1986)

1985 - Crawford Fitting Co. v. U.S. Insurance premiums paid to a Captive by a group of separate corporations that were owned and controlled by a group of related individuals were deductible. The shareholders of the captive were not so economically related that their transactions had to be aggregated and treated as the transactions of a single taxpayer... 606 F. Supp. 136 (N.D. Ohio 1985)

1978 - Allied Fidelity Corp. v. Commissioner… 572 F. 2d 1190 (7th Cir. 1978)

1950 - Commissioner v. Treganowan… 183 F. 2d 288 (2nd Cir. 1950)

1941 - Helvering v. LeGierse Established the principle that both risk shifting and risk distribution are requirements for a contract to be treated as insurance… 312 U.S. 531 (1941)