

Charles Ruchelman Comments on Captive Insurance in Law360

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Law360 Tax Authority

Internal Revenue Service enforcement actions against in-house insurers that elect not to pay tax on premiums - and court decisions siding with the agency - may spell the end of an estate-planning strategy for family businesses to minimize tax liabilities.

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Charles Ruchelman, a tax lawyer at Caplin & Drysdale, said that most of the guidance on microcaptive transactions currently comes from cases that have been litigated and IRS revenue rulings that spell out how businesses can comply with rules around risk-shifting and risk-distribution.

However, the IRS does not always seem to be applying its revenue rulings consistently, Ruchelman said. The agency could provide definitions for the requirements to qualify as an insurance company for federal income tax purposes, such as insurable risk, arm's-length premiums and risk distribution, he said.

"We are getting a scattershot of guidance from the different cases that have been litigated, and companies that have captive insurance ... legitimately want to insure risks that their businesses are facing and want to legitimately establish a captive insurance company to cover those risks," he said.

It can be confusing for taxpayers when states with robust insurance regulations give a thumbs-up to captives, but the IRS then looks at them with suspicion, Ruchelman said.

"They'd like further guidance from the IRS to ensure they're complying with whatever the IRS maintains are the [requirements]."

For the full article, please visit *Law360's* website (subscription required).

Excerpt taken from the article "Captive Insurers' Court Losses May End Tax Planning Method" by Vidya Kauri for Law360 Tax Authority.

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