The New Potential Regulatory  
Death of Aggressive Captive Insurance

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The aggressive micro-captive insurance company industry is at severe risk of decimation. The Internal Revenue Service (IRS) initially issued Notice 2016-66 to designate certain micro-captives as transactions of interest, which allowed the IRS to garner information about a micro-captive to measure if it is an abusive tax shelter. However, Notice 2016-66 was overly broad in scope, forcing participants of non-abusive micro-captives to waste time and money on sending information to the IRS that the IRS never deserved to obtain. Therefore, certain taxpayers brought challenges to Notice 2016-66, and it was overturned in CIC Services, LLC v. Internal Revenue Service following a U.S. Supreme Court opinion allowing the challenge to proceed. In the end, the death knell for the Notice was the IRS’s failure to properly follow the Administrative Procedure Act (APA) when issuing the Notice, as well as the arbitrary and capricious manner in which the Notice was issued.

On April 10, 2023, the IRS issued proposed regulations that revive parts of Notice 2016-66 with certain changes, including designating certain micro-captives as listed transactions, while maintaining the transaction of interest designation for certain other micro-captives. The new listed transaction designation places a massive target on certain micro-captives as abusive tax shelters. Given the heightened penalties for unreported or improperly reported listed transactions, the proposed regulations pose a much bigger threat to the aggressive micro-captive world than the now-defunct Notice.

This Article (1) reviews Notice 2016-66 and the CIC Services case that ruled the Notice violated the APA and was issued in an arbitrary and capricious manner; (2) outlines the IRS Proposed Regulations that replace the Notice (Proposed Regulations); (3) describes the differences between the Notice and the Proposed Regulations, including the heightened penalty regime and increased scrutiny that results from the Proposed Regulations; and (4) analyzes the likely effect the Proposed Regulations will have on the aggressive micro-captive industry.

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# Introduction

Certain micro-captive insurance companies have been on the Internal Revenue Service’s (IRS’s) radar for the last twenty years.[[3]](#footnote-3) For purposes of this rticle, the term “micro-captive” refers to captive insurance companies who have opted for Internal Revenue Code (IRC) § 831(b) status.[[4]](#footnote-4) The IRS has long been concerned with the fact that covered businesses obtain a tax deduction for premium payments made to its micro-captive, but the micro-captive pays no tax on its receipt of the premiums, while paying out zero to minimal claims.[[5]](#footnote-5) That being said, the IRS has repeatedly said it is not seeking to destroy all micro-captives.[[6]](#footnote-6) Thus, the IRS has sought to ensure that properly structured and run micro-captives are not overburdened, while catching and penalizing aggressive micro-captives that operate as abusive tax shelters.

Two of the most important attempts at combatting micro-captive tax abuse are Notice 2016-66 and the new Proposed Regulations.[[7]](#footnote-7) The goal of Notice 2016-66 was to ensure that taxpayers and material advisors disclose enough about their micro-captive transactions for the IRS to determine whether the micro-captives were actual insurance or abusive tax transactions.[[8]](#footnote-8) However, Notice 2016-66 created confusion and elicited challenges to it due to its vagueness on who must submit disclosures.[[9]](#footnote-9) The result of one of these challenges was *CIC Services, LLC v. Internal Revenue Services*, in which the U.S. Supreme Court allowed a challenge to Notice 2016-66 under the Administrative Procedure Act (APA) to proceed.[[10]](#footnote-10)

Rather than seeking to revise the Notice, the IRS instead issued Proposed Regulations to substantively keep much of Notice 2016-66 alive while improving its strategy for catching abusive micro-captives.[[11]](#footnote-11) The Proposed Regulations elevate certain micro-captives from a “transaction of interest” (under the Notice)[[12]](#footnote-12) to a “listed transaction”[[13]](#footnote-13) while leaving other micro-captives under the transaction of interest designation.[[14]](#footnote-14) Those micro-captives that met the Proposed Regulations’ standard for listed transactions now potentially face a much more severe penalty structure and an IRS-painted target on their backs. It is likely that the elevated potential penalties and scrutiny will deter aggressive micro-captives from continuing the practices that lead to listed transaction status.

# The Aggressive Captive Insurance Transaction

## Reportable Transactions Under the Internal Revenue Code

Congress requires (through the IRC) that certain taxpayers provide the IRS with information regarding “reportable transaction[s].”[[15]](#footnote-15) Reportable transactions are those where “information is required to be included with a return or statement because . . . such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.”[[16]](#footnote-16) The Secretary of the Department of Treasury has the authority to issue regulations to carry out the IRC, such as defining what may be a reportable transaction.[[17]](#footnote-17) Further, the IRS may penalize those taxpayers and material advisors who fail to submit information as required for reportable transactions.[[18]](#footnote-18)

The Secretary has designated different types of reportable transactions, two of which are most important for micro-captive transactions under the Proposed Regulations: (1) listed transactions and (2) transactions of interest.[[19]](#footnote-19) Listed transactions are those “that [are] the same as or substantially similar to one of the types of transactions that the Internal Revenue Service has *determined* to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.”[[20]](#footnote-20) On the other hand, transactions of interest are those that the IRS has deemed substantially similar to those the IRS is concerned about but are not necessarily determined to be tax avoidance transactions.[[21]](#footnote-21)

Notably, the difference between these two designations significantly impacts penalties for taxpayers and material advisors.[[22]](#footnote-22) With listed transactions, the maximum fine for those participating may be up to $200,000 for a corporate taxpayer or $100,000 for an individual taxpayer who is a natural person.[[23]](#footnote-23) For any other reportable transaction, including transactions of interest, the maximum penalty is $50,000 for corporate taxpayers and $10,000 for individual taxpayers.[[24]](#footnote-24) This distinction is enormous, as there can be a $150,000 gap for corporate taxpayers and a $90,000 gap for individual taxpayers, depending on the type of transaction.

On the other hand, for material advisors who fail to file accurate information or file late regarding a listed transaction, the penalty will be the greater of 50% of the income the material advisor derived from aiding with the listed transaction or $200,000.[[25]](#footnote-25) Material advisors who fail to furnish information regarding a transaction of interest or file late could face a $50,000 penalty.[[26]](#footnote-26) Here, material advisors face a significant difference in penalties of $150,000 between the transaction designations. Still, this penalty could quickly rise due to the “greater of” language,[[27]](#footnote-27) whereby a loss of 50% of the income could render a massive penalty for listed transactions.

Finally, there are also disclosure requirements for taxpayers participating in activities regarding reportable transactions.[[28]](#footnote-28) Material advisors would also fall under this disclosure requirement.[[29]](#footnote-29) The IRS has three reasons for mandating these disclosures for reportable transactions: (1) to raise red flags for abusive tax transactions; (2) to communicate to taxpayers the types of transactions that the IRS deems abusive; and (3) to “detect and deter abusive tax shelter activity.”[[30]](#footnote-30)

Whenever the IRS makes use of the reportable transaction regime, there is a risk that the IRS will promulgate too narrow or too broad a notice.[[31]](#footnote-31) The IRS errs on the side of disclosure by adding that transactions should be reported that are “substantially similar” to the described transaction.[[32]](#footnote-32) Of course, this addition has the potential to cause non-abusive transactions to submit information the IRS was never entitled to receive.[[33]](#footnote-33) While the IRS has to review transactions that never should have been submitted, taxpayers and material advisors of non-abusive transactions also must expend unnecessary time and resources on IRS compliance.[[34]](#footnote-34) The IRS seeks to avoid this problem by being very specific in describing which transactions are abusive and require disclosure.[[35]](#footnote-35) As described above, the use of notices for this purpose has led to numerous challenges, and the result for micro-captives was a ruling from the Eastern District of Tennessee that Notice 2016-66 failed to follow the APA and was issued in an arbitrary and capricious manner.[[36]](#footnote-36)

## Micro-Captive Insurance Companies

### Background of Captive Insurance Companies

A micro-captive insurance company’s role is to write insurance policies.[[37]](#footnote-37) Often, the insured is a business whose shareholders also own the micro-captive.[[38]](#footnote-38) A micro-captive insurance company is a small captive insurance company[[39]](#footnote-39) that “makes a section 831(b) election to be taxed only on its investment income, not on its underwriting income.”[[40]](#footnote-40) The main tax advantage of this arrangement is the ability to deduct premiums paid to the captive as deductible business expenses,[[41]](#footnote-41) while the captive does not pay tax on the same premiums received in the form of underwriting income (the “difference between an insurance company’s earned premiums and its expenses and claims”).[[42]](#footnote-42) In return for not being taxed on its underwriting income, the micro-captive may not deduct any underwriting income losses.[[43]](#footnote-43) To be considered a micro-captive insurance company, the captive must receive less than the annually adjusted threshold ($2.65 million as of 2023).[[44]](#footnote-44) Micro-captives must still pay tax on the investment income the micro-captive earns from the accumulated premiums.[[45]](#footnote-45)

### The IRS’s Issue with Micro-Captive Transactions

IRC § 831(b) captives must still act as insurance companies.[[46]](#footnote-46) However, the IRC does not define the term “insurance.”[[47]](#footnote-47) That being said, the IRS and courts apply several critical factors to determine whether a company is truly an insurance company.[[48]](#footnote-48) A proper insurance company must “involve risk-shifting[,] involve risk-distribution[,] involve insurance risk[,] and meet commonly accepted notions of insurance.”[[49]](#footnote-49)

The IRS has taken several actions to battle captives that it does not deem to be insurance companies. For example, the IRS included these transactions on its “Dirty Dozen” list of tax scams.[[50]](#footnote-50) The IRS also launched an “audit and investigation campaign against aggressive § 831(b) [micro-]captive promoters and operators.”[[51]](#footnote-51) The IRS eventually issued Notice 2016-66 to describe which micro-captives were reportable transactions and who was required to disclose these transactions to IRS.[[52]](#footnote-52)

# Notice 2016-66 & the *CIC Services* Case

## Notice 2016-66

On November 1, 2016, the IRS issued Notice 2016-66.[[53]](#footnote-53) The IRS designated certain micro-captive transactions as transactions of interest.[[54]](#footnote-54) However, the IRS struggled to identify which § 831(b) arrangements were tax avoidance transactions.[[55]](#footnote-55) Participants were thus required to disclose certain information to the IRS using Form 8886 if they were substantially similar to a transaction of interest.[[56]](#footnote-56) All participants were to give sufficient detail to aid the IRS in understanding the tax structure for the reportable transaction.[[57]](#footnote-57) The IRS issued several key distinctions to assist those handling micro-captive transactions.[[58]](#footnote-58)

### Reportable Captive Transactions

The IRS did not clearly define which micro-captive transactions were subject to disclosure in Notice 2016-66.[[59]](#footnote-59) Notice 2016-66 described situations that make a micro-captive a reportable transaction.[[60]](#footnote-60) First, an individual directly or indirectly owns an entity or an interest in an insurance coverage entity.[[61]](#footnote-61) Second, there exists a contract between the captive and the insured individual or company that owns the captive.[[62]](#footnote-62) Third, the captive must elect under § 831(b) to be taxed solely on its investment income and not its underwritten income.[[63]](#footnote-63) Fourth, the insured owns at least 20% of the voting power of the outstanding micro-captive stock.[[64]](#footnote-64) Finally, if the captive’s most recent five taxable years is less than 70% of captive’s premiums earned, or the captive used a loan or guarantee to the insured, this would likely be an abusive micro-captive transaction.[[65]](#footnote-65) If the captive has been in existence for less than five taxable years, the 70% rule would apply to the entire period of the micro-captive’s existence.[[66]](#footnote-66)

In addition to the above factors, IRS also looks at the contract coverage.[[67]](#footnote-67) The IRS noted several characteristics that could signify that a micro-captive transaction was acting as a tax avoidance transaction by looking at the contract coverage.[[68]](#footnote-68) The IRS discussed the following type of coverage issues that could arise:

(1) the coverage involves an implausible risk; (2) the coverage does not match a business need or risk of Insured; (3) the description of the scope of the coverage in the Contract is vague, ambiguous, or illusory; or (4) the coverage duplicates coverage provided to Insured by an unrelated, commercial insurance company, and the policy with the commercial insurer often has a far smaller premium.[[69]](#footnote-69)

If a participant has any one of the above characteristics, the IRS likely would consider it to be an abusive reportable transaction.[[70]](#footnote-70)

### What Must be Disclosed?

The general rule is that all micro-captive participants must use Form 8886 to “identify and describe the transaction in sufficient detail” to help alleviate any confusion for the IRS in determining whether this is an abusive transaction.[[71]](#footnote-71) This information would include the tax structure and all the participants involved in the transaction.[[72]](#footnote-72)

Micro-captives must provide “whether [the] Captive is reporting because”: (1) the micro-captive failed the 70% low ratio factor; or (2) the micro-captive provided benefits by financing to an insured through a loan, guarantee, or transfer; or (3) both (1) and (2) are met.[[73]](#footnote-73) The micro-captive must also provide information regarding: (1) under what authority the micro-captive is chartered; (2) descriptions of the type of coverage provided by the micro-captive during the years of participations; (3) an explanation of how the micro-captive determined how much premium is to be paid for each coverage; (4) a report of claims paid; and (5) a description of any assets the micro-captive held.[[74]](#footnote-74) The discloser must provide all this information for each year of the micro-captive’s existence.[[75]](#footnote-75) Procedurally, all this information must be disclosed by attaching Form 8886 to its tax return for each year of the micro-captive’s existence.[[76]](#footnote-76) The taxpayer would also send this disclosure statement to the Office of Tax Shelter Analysis.[[77]](#footnote-77)

### Penalties for Failure to Disclose

Taxpayers and material advisors who failed to comply with these disclosure requirements regarding micro-captives that are transactions of interest would be subject to penalties.[[78]](#footnote-78) For failing to disclose a transaction of interest, corporate taxpayers would face a maximum fine of $50,000, while individual taxpayers would face a maximum fine of $10,000.[[79]](#footnote-79) The IRS could also impose additional penalties on a taxpayer, such as an accuracy-related penalty equal to 20% of the underpayment.[[80]](#footnote-80) For example, if a taxpayer failed to accurately relay information regarding a transaction creating $100,000 in income but submitted a tax form for only $10,000, the understatement would be $90,000. The IRS’s accuracy-related penalty of 20% of $90,000 would thus create an additional fine of $18,000.

Further, material advisors may be subject to additional penalties.[[81]](#footnote-81) Material advisors who failed to file or furnish information regarding a transaction of interest could face a penalty of $50,000.[[82]](#footnote-82) Additionally, the Secretary could request a written list of advisees from a material advisor.[[83]](#footnote-83) If a material advisor failed to submit the advisee list within twenty days of the Secretary’s written request, the material advisor would face an additional $10,000 penalty for each day missed after the initial twenty-day period.[[84]](#footnote-84)

## Taxpayer’s Main Issue with Notice 2016-66

Many micro-captive participants were perplexed by Notice 2016-66.[[85]](#footnote-85) Participants felt the IRS had not given clear guidelines to differentiate abusive from legitimate transactions.[[86]](#footnote-86) Many of the Notice’s guidelines seemed to implicate legitimate transactions.[[87]](#footnote-87) In particular, there was little guidance on the breadth of the term “substantially similar,”[[88]](#footnote-88) potentially causing legitimate micro-captives to make unnecessary reporting due to unclear guidelines[[89]](#footnote-89) to avoid potential penalties.[[90]](#footnote-90) Additionally, the breadth of Notice 2016-66 likely caused certain tangential third parties affiliated with these transactions to submit Form 8886.[[91]](#footnote-91)

Some commentators noted that micro-captives must file a Form 1120-PC (U.S. Property and Casualty Insurance Company Income Tax Return), and that form would capture the same information that the IRS sought from Notice 2016-66.[[92]](#footnote-92) Solely using Form 1120-PC for insurance companies would create less administrative work by using one form instead of two.[[93]](#footnote-93) Unfortunately, Notice 2016-66 created unclear guidelines that led taxpayers affiliated with legitimate transactions to make unnecessary reports.[[94]](#footnote-94) Also, potentially over-burdensome reporting requirements were costing taxpayers time and money.[[95]](#footnote-95) With these issues of unclear, unnecessary, and unduly burdensome reporting requirements, certain taxpayers decided to get the courts involved over Notice 2016-66.[[96]](#footnote-96)

## CIC Services Case

### Background

The determinative case surrounding Notice 2016-66 began on March 27, 2017, just four months after the IRS issued Notice 2016-66 on November 1, 2016.[[97]](#footnote-97) CIC Services, a manager of micro-captive insurance companies, initiated this action against the IRS.[[98]](#footnote-98) CIC Services noted that adhering to the Notice 2016-66 disclosure requirements caused them to incur significant costs.[[99]](#footnote-99) Therefore, CIC Services challenged Notice 2016-66, raising two issues.[[100]](#footnote-100) First, they argued that the IRS failed to adhere to the mandatory notice-and-comment requirements under the APA in issuing Notice 2016-66.[[101]](#footnote-101) Second, they argued that the IRS issued Notice 2016-66 “arbitrar[ily] and capricious[ly]. . . .”[[102]](#footnote-102) CIC Services pleaded with the court to administer an injunction to prohibit the IRS from enforcing the disclosure requirements under Notice 2016-66 and to eventually set aside Notice 2016-66 completely.[[103]](#footnote-103) Ultimately, CIC would win on both issues on March 21, 2022, whereby the United States District Court of Eastern District Tennessee granted the requested injunction.[[104]](#footnote-104)

### The Court’s Analysis

#### Notice-and-Comment Procedure under the APA

Beginning with the first issue, the APA requires that legislative rules be administered through a mandatory notice-and-comment requirement.[[105]](#footnote-105) While the IRS agreed with its failure to follow the APA’s procedure, the IRS argued that Congress exempted the IRS from this procedure.[[106]](#footnote-106) According to the IRS, Notice 2016-66 would be an interpretive rule and not a legislative rule.[[107]](#footnote-107) Therefore, Congress did not intend to place this requirement upon the IRS.[[108]](#footnote-108)

The court quickly disregarded the IRS’s contention by following precedent from an earlier decision decided in the Sixth Circuit.[[109]](#footnote-109) In *Mann Construction*, the Sixth Circuit disagreed with the IRS when using this exact argument.[[110]](#footnote-110) *Mann Construction* also challenged another notice (for a different transaction) due to the IRS’s failure to adhere to the notice-and-comment procedure.[[111]](#footnote-111) With an identical response to that made in *CIC Services*, the IRS argued that Congress had exempted the IRS from this APA procedure.[[112]](#footnote-112) The Sixth Circuit disagreed and held that the notice was a legislative rule and that Congress did not exempt the IRS from the APA’s procedure.[[113]](#footnote-113)

In *CIC Services*, the court held that the Sixth Circuit’s analysis was binding and “applie[d] equally to the arguments advanced by the IRS regarding Notice 2016-66 in this case.”[[114]](#footnote-114) Therefore, the court invalidated Notice 2016-66 for the IRS’s failure to adhere to the APA’s procedures.[[115]](#footnote-115)

#### Arbitrary and Capricious

To determine if an agency implemented an action arbitrarily and capriciously,[[116]](#footnote-116) courts must decide if the agency “examined ‘the relevant data’ and articulated ‘a satisfactory explanation’ for [its] decision, ‘including a rational connection between the facts found and the choice made.’”[[117]](#footnote-117) A court examines the administrative record to review an agency’s action for arbitrary or capricious findings.[[118]](#footnote-118) The administrative record would signify the data and facts the IRS focused upon when finding that micro-captive transactions should be considered transactions of interest.[[119]](#footnote-119) The court would look at the administrative record to see whether the agency:

has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.[[120]](#footnote-120)

From these factors, a court would “narrow[ly]” review the agency’s reasoning and uphold the action if the agency’s reasoning could “reasonably be discerned.”[[121]](#footnote-121)

Here, the focus was on the IRS’s administrative records in implementing Notice 2016-66.[[122]](#footnote-122) Congress does require taxpayers to give information to the IRS regarding reportable transactions, and the IRS may promulgate regulations requesting such specific details.[[123]](#footnote-123) Nonetheless, the IRS must do so with an actual basis “to designate micro-captive transactions as a ‘transaction of interest’ based on the potential for tax avoidance or evasion.”[[124]](#footnote-124) The court ultimately found that the IRS failed to include relevant data in the administrative record for indicating micro-captives as transactions of interest, which are reportable transactions.[[125]](#footnote-125) The court looked explicitly at the language used in Notice 2016-66 and other evidence from the IRS, such as cases, news releases, and federal statutes.[[126]](#footnote-126)

The court honed in on the IRS’s language in Notice 2016-66 for designating micro-captive transactions as transactions of interest.[[127]](#footnote-127) The IRS seemingly used general language, such as stating that they “are *aware* of a type of transaction” and “believe this transaction ([‘]micro-captive transaction[’]) has a *potential* for tax avoidance or evasion.”’[[128]](#footnote-128) Further, the IRS and Department of Treasury stated that they “*lack[ed]* *sufficient* information to identify which § 831(b) arrangements should be identified specifically as a tax avoidance transaction and *may lack sufficient* information to define the characteristics that distinguish the tax avoidance transactions from other § 831(b) related-party transactions.”[[129]](#footnote-129) Essentially, the court noted that the IRS has confessed that it has no clear reasoning other than hopeful beliefs and suspicions.[[130]](#footnote-130) The IRS’s concern must be accompanied by relevant data or facts, which were not present in the administrative record in Notice 2016-66.[[131]](#footnote-131)

The IRS then pointed to litigation cases with some of these transactions.[[132]](#footnote-132) Still, the court noted that these cases failed to sway them because not all of them focused on micro-captive transactions, and not all concluded that they were abusive transactions.[[133]](#footnote-133) Additionally, the IRS had pointed to two IRS news releases, federal statutes, legislative history, and the IRS’s emails regarding the Notice.[[134]](#footnote-134) This IRS argument failed because the IRS did not substantiate how these were relevant in its decision-making.[[135]](#footnote-135)

Ultimately, the court looked for relevant facts and data, but the IRS had none to show in its administrative record, which is vital when issuing a regulation.[[136]](#footnote-136) While this does not mean that micro-captive transactions can never be abusive transactions, the IRS still ultimately failed to disprove that Notice 2016-66 was promulgated arbitrarily and capriciously.[[137]](#footnote-137)

#### The Relief

Since the IRS failed to complete the notice-and-comment procedures and issued Notice 2016-66 arbitrarily and capriciously, the court had to administer the appropriate relief, which was to invalidate and set aside Notice 2016-66 and destroy the material taken already by the IRS.[[138]](#footnote-138) The APA’s text allows a reviewing court to “hold unlawful and set aside agency action” when it is found to be arbitrary and capricious.[[139]](#footnote-139) While the Sixth Circuit held that it must invalidate the action,[[140]](#footnote-140) the court noted that the United States Court of Appeals for the District of Columbia held that it “depends on the seriousness of the order’s deficiencies . . . .”[[141]](#footnote-141) While the court in this case did not specify what it deemed was the most consistent approach, the court found that vacating Notice 2016-66 was appropriate.[[142]](#footnote-142) The court would not give the IRS the benefit of keeping Notice 2016-66 in place while it took necessary actions to comply with the APA due to the IRS’s poor history of complying with the APA.[[143]](#footnote-143) This would not be the sole remedy, as the court noted how the taxpayers and material advisors expended time and resources for the past four years, whereby the IRS gained information that it was not entitled to receive.[[144]](#footnote-144) Therefore, the IRS had to return the information it wrongfully acquired, in addition to the court invalidating and setting aside Notice 2016-66.[[145]](#footnote-145)

# The New Proposed Regulations

After the decision in *CIC Services*, the IRS decided not to enforce the disclosure requirements or penalties dependent upon Notice 2016-66.[[146]](#footnote-146) Instead, the IRS and Department of Treasury issued proposed regulations to identify certain micro-captive transactions as listed transactions and certain others as transactions of interest.[[147]](#footnote-147) While Notice 2016-66 may be procedurally obsolete, it substantively lives on in these proposed regulations with some additional changes.[[148]](#footnote-148)

## Certain Micro-Captive Transactions Are Now Listed Transactions

Certain micro-captive transactions will now be divided into two categories: (1) listed transactions and (2) transactions of interest[[149]](#footnote-149) instead of solely transactions of interest.[[150]](#footnote-150) Both transactions will involve direct or indirect ownership over a captive, which may include a derivative interest.[[151]](#footnote-151) The IRS deemed two features of micro-captive transactions as triggering a listed transaction designation, both of which were initially considered features of transactions of interest.[[152]](#footnote-152) The first feature is focused on a financing factor,[[153]](#footnote-153) while the second feature is determined by a loss ratio factor.[[154]](#footnote-154) A micro-captive transaction lacking either of these factors will be deemed a transaction of interest whereby the IRS will require more information,[[155]](#footnote-155) discussed below.

Under the Proposed Regulations, the IRS expanded Notice 2016-66’s definition of micro-captive ownership to ensure that it took into account derivatives and interests of the micro-captive.[[156]](#footnote-156) In keeping with Notice 2016-66, the Proposed Regulations maintain that ownership includes micro-captives with “20 percent” over at least “the voting power or the value of the outstanding stock or equity interest.”[[157]](#footnote-157) In addition, the Proposed Regulations include those who attempt to hide ownership through derivatives or as beneficiaries from trusts and estates.[[158]](#footnote-158) According to the IRS, this change will presumably ensure that it can track down those using the micro-captives as shams but who attempt to argue that they do not have ownership over a captive.[[159]](#footnote-159)

With the first feature, micro-captive transactions with a financing factor will now be deemed listed transactions.[[160]](#footnote-160) A financing factor would include micro-captives that have financed, loaned, or guaranteed any amount to a recipient whereby the recipient received the money free of taxable income during the computation period.[[161]](#footnote-161) The IRS has noted that the computation period would entail the most recent five years or all the taxable years if the micro-captive has existed for less than five taxable years.[[162]](#footnote-162) Ultimately, the presence of a financing factor, according to the IRS, exemplifies a tax abuse sham or avoidance.[[163]](#footnote-163)

With the second feature, micro-captive transactions with a certain loss ratio factor will now be deemed listed transactions.[[164]](#footnote-164) The loss ratio factor exists when a micro-captive’s insured losses and claims for administration expenses during the loss computation period are less than 65% of the premiums earned, reduced by policyholder dividends paid during the same period.[[165]](#footnote-165) Thus, the IRS reduced the original 70% loss ratio in Notice 2016-66 to 65%.[[166]](#footnote-166) Additionally, the loss computation period would no longer be five years, as in Notice 2016-66, but rather the most recent ten years of the micro-captive or all of the micro-captive’s years if the micro-captive has existed for less than ten years.[[167]](#footnote-167) This change allows a micro-captive to have a history to prove itself as a legitimate insurance company.[[168]](#footnote-168)

The IRS has proposed this percentage change be applied to both listed transactions and transactions of interest.[[169]](#footnote-169) The IRS noted that it was unaware of any non-abusive transactions that had to disclose due to the 70% rule.[[170]](#footnote-170) However, the loss ratio factor aids the IRS by demonstrating tax avoidance schemes through little to no claims and excessive premium pricing.[[171]](#footnote-171) Since premiums are present to cover potential loss for claims, the premiums should naturally reflect the losses.[[172]](#footnote-172) Hence, according to the IRS, the loss ratio factor is an excellent tool for exposing abusive transactions.[[173]](#footnote-173) However, the IRS did note that it would like to hear comments on potentially adopting a combined ratio factor instead of a loss ratio factor.[[174]](#footnote-174)

There are exceptions for micro-captive transactions that the IRS would not deem listed transactions.[[175]](#footnote-175) The transaction must involve (1) a consumer coverage insurance contract[[176]](#footnote-176) or (2) insurance for employee benefits where the Employee Benefits Security Administration of the U.S. Department of Labor has exempted these transactions.[[177]](#footnote-177) These exceptions apply to micro-captive transactions of interest.[[178]](#footnote-178)

## Micro-Captive Transactions as Transactions of Interest

The IRS will continue to find certain micro-captive transactions as transactions of interest.[[179]](#footnote-179) Specifically, these include transactions that are the same or substantially similar to a transaction involving a micro-captive with a contract and where the insured losses and claim administration expenses are less than 65% of the premiums earned minus the policyholder dividends paid by the micro-captive during the transactions of interest computation period.[[180]](#footnote-180) The transactions of interest computation period is the most recent nine taxable years of the micro-captive or all of the years if the micro-captive’s existence is less than nine years.[[181]](#footnote-181) According to the IRS, this allows them to seek more information on any potential transactions used for tax abuse schemes.[[182]](#footnote-182) The two exceptions described above for listed transactions also apply to transactions of interest.[[183]](#footnote-183) The IRS also made it clear that once any particular transaction becomes listed, it need not additionally disclose as a transaction of interest.[[184]](#footnote-184) According to the IRS, material advisors who are unsure how to categorize the transaction should still disclose the transaction as a listed transaction.[[185]](#footnote-185)

## Disclosure Requirements

The IRS’s proposed regulations require disclosure statements under Form 8886 for both listed transactions and transactions of interest.[[186]](#footnote-186) However, the IRS has reduced the information required in this form compared to the information needed in Notice 2016-66.[[187]](#footnote-187) The IRS noted that certain information is no longer required to be disclosed. In particular, information such as “identify[ing] which factors of the proposed regulations apply, stat[ing] under what authority Captive is chartered, describ[ing] how amounts treated as premiums for coverage provided by Captive were determined, provid[ing] the amounts of reserves reported by Captive on its annual statement, or describ[ing] the assets held by Captive” is no longer required.[[188]](#footnote-188) However, the proposed regulations do require disclosure requirements about the insurance policies the micro-captive uses, the amount from claims, and the amount for premiums.[[189]](#footnote-189)

The Proposed Regulations set forth a disclosure safe harbor for owners of an insured company in a contract with a micro-captive.[[190]](#footnote-190) If an individual has direct or indirect ownership over the insured company, the individual may not need to disclose.[[191]](#footnote-191) The individual would need written or electronic proof that the insured company will adhere to or already has adhered to the disclosure requirements under the Proposed Regulations.[[192]](#footnote-192) Owners may use Form 8886 as acknowledgment.[[193]](#footnote-193) However, an owner would be required to timely file disclosures if the insured company failed to do so.[[194]](#footnote-194)

## Penalties for Non-Compliance

Taxpayers, material advisors, and other participants in micro-captive transactions may face higher penalties now that certain micro-captive transactions are listed transactions instead of solely transactions of interest.[[195]](#footnote-195) This new designation will create a much larger penalty scheme for taxpayers and materials advisors while echoing some penalties discussed in Notice 2016-66. Additionally, the Proposed Regulations emphasized several other penalties (not discussed in Notice 2016-66) that can affect all participants in the micro-captive transactions.[[196]](#footnote-196) The Secretary may also use an extra year of tax assessment for those who fail to include information about a micro-captive.[[197]](#footnote-197)

In addition to the potential for “listed transaction” penalties, taxpayers may also be subject to the 20% accuracy-related penalty described in Notice 2016-66.[[198]](#footnote-198) Taxpayers who fail to file or file false or incomplete information on a tax return regarding a micro-captive listed transaction may face an initial maximum penalty of $200,000 as a corporate taxpayer or $100,000 as an individual taxpayer.[[199]](#footnote-199) Additionally, the IRS may impose a 20% penalty on any taxpayer who received a deduction by filing inaccurate information on a tax return about the transaction.[[200]](#footnote-200) For example, a taxpayer may have filed a tax form for $20,000 gained from a micro-captive but was supposed to file for $200,000. The IRS’s accuracy penalty would charge 20% from the understatement, which would be the $180,000 difference.[[201]](#footnote-201) Therefore, the taxpayer would need to pay an additional $36,000 as this is 20% of the understatement, which would get added to a potential maximum penalty of $200,000 or $100,000.

Second, material advisors will face higher penalties if they are involved with listed transaction micro-captives, in addition to the same penalties noted in Notice 2016-66 for failure to disclose an advisee list requested by the Secretary.[[202]](#footnote-202) With the new listed transaction designation, material advisors who fail to furnish information (or timely file) can face a higher penalty equal to the greater of 50% of the income derived for assisting in the transaction or a flat fee of $200,000.[[203]](#footnote-203) Further, the Secretary may request a written list of the material advisor’s advisees, which the material advisor would have twenty days from the Secretary’s notice to send this list.[[204]](#footnote-204) The material advisor could face penalties of up to $10,000 each day after the twentieth day of failure to disclose,[[205]](#footnote-205) unless the advisor fails for reasonable cause.[[206]](#footnote-206)

Third, the Proposed Regulations also detail other penalties for participating taxpayers and material advisors who take part in an abusive micro-captive scheme.[[207]](#footnote-207) For promoting abusive tax shelters through intentionally false statements, using statements that one would reasonably know are false, or giving a gross valuation overstatement, Section 6700 designates a penalty of $1,000[[208]](#footnote-208) for each arrangement and an additional 50% penalty for any income derived from these statements.[[209]](#footnote-209) There is also a knowledge requirement that the IRS must prove unless the individual made a gross valuation overstatement, which is when the fair market value would exceed 200% of what was on the tax return.[[210]](#footnote-210)

As an example of a Section 6700 penalty, if an individual organized a micro-captive and encouraged five corporations to buy an interest in the entity to gain a supposedly lawful deduction, there would be a $5,000 penalty.[[211]](#footnote-211) Since there were five arrangements with five different corporations, the IRS could impose a $5,000 fine if it proved the statements were false or should be reasonably known as false.[[212]](#footnote-212) If the corporation also paid the individual $10,000 for the arrangement, there would be an additional $5,000 penalty on the individual due to the 50% penalty for income gained.[[213]](#footnote-213) However, if the IRS found a gross valuation overstatement, it could skip proving any falseness of statements.[[214]](#footnote-214) With the prior example, if the amount placed on the tax return were $50,000 but, in actuality, the number should have been $200,000, there would be a gross valuation overstatement, which means the IRS could automatically penalize $1,000 for each arrangement.[[215]](#footnote-215)

Other penalty regimes contained in the Proposed Regulations (but not in Notice 2016-66) are Section 6700 through Section 6701.[[216]](#footnote-216) The IRS may penalize an individual $1,000 (or $10,000 for a corporation) for aiding and abetting an understatement on a tax return.[[217]](#footnote-217) The aiding and abetting penalty is helpful for the IRS when the IRS cannot prove the falseness of a statement or find the presence of a gross valuation overstatement.[[218]](#footnote-218) In the last example from the previous paragraph, the IRS, through Section 6701, could penalize a natural person $1,000 for the understatement on the tax return.[[219]](#footnote-219) Section 6701 is essentially a catch-all penalty that allows the IRS to punish those handling micro-captive transactions with reporting understatements.

Finally, another factor could allow the IRS more room to penalize participants required to file tax information about micro-captive transactions.[[220]](#footnote-220) Suppose a participant fails to include micro-captive details on a tax return or statement.[[221]](#footnote-221) In that case, the Secretary automatically gains one additional year of tax assessment because of the new listed transaction designation.[[222]](#footnote-222) This extra year begins the earlier of once the Secretary receives the required information or when the material advisor sends the Secretary the necessary lists about the micro-captive’s transaction history.[[223]](#footnote-223)

# Likely Effect of Proposed Regulations on Aggressive Transactions

## Deterrence from Micro-Captive Transactions

The new Proposed Regulations will likely deter individuals from participating in micro-captive transactions for two key reasons: higher penalties and heightened scrutiny. The biggest new factor in this regard is the potential for micro-captive participants to get ensnared in a listed transaction.[[224]](#footnote-224) As discussed above, the listed transaction potential penalties have increased greatly over what non-compliant micro-captive participants previously faced under Notice 2016-66.[[225]](#footnote-225) For example, material advisors and taxpayers have a $150,000 and $90,000 increase, respectively, as a base penalty for failing to disclose a micro-captive listed transaction over the Notice penalties.[[226]](#footnote-226) Additionally, all micro-captive participants also may end up being assessed the catch-all penalty included in the Proposed Regulations.[[227]](#footnote-227) This catch-all penalty under Section 6701 for aiding or abetting an understatement of tax liability is easily administered since it only requires an understatement on a tax return.[[228]](#footnote-228) As such, micro-captive participants and material advisors need to think hard on whether the compliance costs and potential assessable penalties for disclosure missteps are worth the benefits of the transaction.[[229]](#footnote-229)

In addition to the increased potential penalties, the Proposed Regulations also bring greater scrutiny to certain aggressive micro-captive transactions. The IRS generally reserves listed transaction status for transactions that it wants to take a hard look at and nearly presume to be abusive and non-compliant.[[230]](#footnote-230) This type of scrutiny is a strong deterrent to potential material advisors since it comes with (1) increased compliance costs; (2) self-reporting that they know the IRS will review very carefully; and (3) the heightened potential that the IRS will litigate the material advisor’s transactions.[[231]](#footnote-231) In addition to the scrutiny of material advisors, listed transaction status leads to additional scrutiny of the micro-captive participants. As discussed above, material advisors must produce a list to the IRS of all participants in any micro-captive transactions and provide certain information about the transaction.[[232]](#footnote-232) The list must be maintained for seven years and some of this information may include (1) identifying and describing the transaction; (2) the tax benefits from the transaction;[[233]](#footnote-233) and (3) who the material advisor aided.[[234]](#footnote-234) As discussed above, material advisors must provide accurate information to avoid any accuracy-related penalties.[[235]](#footnote-235) Thus, the IRS will be provided with everything it needs to know to launch audits and litigation upon micro-captive participants. The risk is too significant for most reasonable taxpayers to believe that the potential tax savings are worth the IRS compliance risk. Aggressive micro-captive transactions will no longer be desirable because “[w]hen the IRS announces that a tax strategy is a listed transaction or transaction of interest, market demand for that strategy among taxpayers typically ceases.”[[236]](#footnote-236)

## A Potential CIC Services Challenge to the New Proposed Regulations

The IRS sought to resolve its loss in *CIC Services* by issuing the Proposed Regulations. As taxpayers were quick to challenge Notice 2016-66, there may be court challenges to the Proposed Regulations.[[237]](#footnote-237) The two challenges taxpayers brought in *CIC Services* were the failure to follow the notice-and-comment procedures under the APA and the issuance of a guidance done arbitrarily and capriciously.[[238]](#footnote-238) Reviewing the case of *CIC Services*, one may see how the IRS’s Proposed Regulations would stack up against these two potential challenges.

The notice-and-comment procedure under the APA will likely not be an issue for the IRS. The IRS has complied with the APA by having a notice period in the Proposed Regulations,[[239]](#footnote-239) stating that the IRS will have a public hearing for comments on July 19, 2023, at 10:00 a.m. through teleconference.[[240]](#footnote-240) Further, individuals may submit written comments electronically.[[241]](#footnote-241) Therefore, the IRS likely has properly complied with the APA’s notice-and-comment procedure, as the IRS has given notice.

Taxpayers could also challenge the Proposed Regulations as being arbitrary and capricious. This time, however, the IRS has prepared for arbitrary or capricious challenges by describing how it arrived at the provisions in the Proposed Regulations (unlike what was contained in Notice 2016-66).[[242]](#footnote-242) For example, when discussing how the IRS arrived at its original 70% for the loss ratio factor in Notice 2016-66, the IRS noted its basis for this number by looking at IRC § 833(c)(5) for Blue Cross and Blue Shield organizations.[[243]](#footnote-243) Congress enacted an 85% medical loss ratio test in § 833(c)(5).[[244]](#footnote-244) The IRS and Treasury Department also “considered data from the National Association of Insurance Commissioners (“NAIC”) in determining the applicable loss ratio factor.”[[245]](#footnote-245)

Further, in arriving at the new 65% threshold in the Proposed Regulations, the IRS noted that it did not wrongfully penalize any non-abusive micro-captives at 70% and that 65% would help the IRS crack down on abusive micro-captives while not requesting wrongful disclosures from non-abusive micro-captives.[[246]](#footnote-246) Therefore, the 65% threshold would be better for the IRS and non-abusive micro-captives.[[247]](#footnote-247) Ultimately, the IRS has, at a minimum, likely demonstrated that its choice of percentage under the Proposed Regulations was arrived at by using relevant data and not done so arbitrarily.

The IRS also noted research regarding the costs for disclosure requirements under Form 8886 and a chart to display the safety of the micro-captive insurance economy.[[248]](#footnote-248) The study regarding disclosures included the average time and money expended in filing Form 8886.[[249]](#footnote-249) The IRS’s Research, Applied Analytics, and Statistics division went as far as to calculate the price for the disclosure requirements to demonstrate that it would not be burdensome or economically harmful.[[250]](#footnote-250) Further, the IRS used a chart to illustrate how these Proposed Regulations would not tank the micro-captive transaction economy.[[251]](#footnote-251) The IRS will likely use this research and data to prepare for arbitrary and capricious challenges by demonstrating that the IRS issued its new regulations with relevant data.

There currently does not appear to be any calls for court challenges to the Proposed Regulations. However, should a *CIC Services*-type challenge arise, the IRS would likely prevail on both of the challenges, as the IRS has given notice and an actual basis for its decisions in its administrative record. Time will tell on what type of court challenges may arise (if any), but, for now, the IRS is likely safe from a *CIC Services*-type case.

# Conclusion

How the Proposed Regulations will ultimately affect the micro-captive industry is yet to be fully seen. Certain commentators have already expressed that they do not favor the Proposed Regulations changes to the micro-captive industry.[[252]](#footnote-252) The IRS will hear comments during the notice-and-comment procedure for the Proposed Regulations, and many will be eager to see whether the IRS takes account of these comments in the final regulations. Yet, the IRS has set its sights on stopping abusive micro-captives, and the Proposed Regulations are a great deterrent to material advisors and potential participants to entering aggressive micro-captive transactions.

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3. . *See* Joshua D. Blank & Ari Glogower, *The Trouble with Targeting Tax Shelters*, 74 Admin. L. Rev. 69, 70 (2022). [↑](#footnote-ref-3)
4. . *Treasury and IRS Propose Regulations Identifying Micro-Captive Transactions as Abusive Tax Transactions*, IRS (Apr. 10, 2023), https://www.irs.gov/newsroom/treasury-and-irs-propose-regulations-identifying-micro-captive-transactions-as-abusive-tax-transactions [https://perma.cc/FD3L-E3KZ] (“Tax law generally allows businesses to create ‘captive’ insurance companies to protect against insurance risks and provides that certain small non-life insurance companies can choose to pay tax only on their investment income under Internal Revenue Code section 831(b) (‘micro-captives’). In abusive micro-captive structures, promoters, accountants or wealth planners persuade owners of closely held entities to participate in schemes that lack many of the attributes of genuine insurance.”). [↑](#footnote-ref-4)
5. . I.R.S. Notice 2016-66, 2016-47 I.R.B. 745 [hereinafter Notice 2016-66]. [↑](#footnote-ref-5)
6. . *Notice 2016-66: Is the IRS Repeating the Mistakes of the Past or Learning from Them?*, Captive Ins. Times (Apr. 19, 2017),

   https://www.captiveinsurancetimes.com/specialistfeatures/specialistfeature.php?specialist/specialistfeature.php?specialist\_id=174&navigationaction=features&newssection=features [https://perma.cc/C364-SVQF] [hereinafter Captive Insurance Times] (“Moreover, the IRS acknowledged that there are micro captives that are truly legitimate insurance companies and that those companies will have a reporting requirement even though they are not the companies the IRS is concerned with.”); *see also* *id.* (explaining the Treasury Department limits inquiry to transactions with certain characteristics involving an abusive micro-captive company); *see also* *id.* (“Moreover, the IRS acknowledged that there are micro captives that are truly legitimate insurance companies and that those companies will have a reporting requirement even though they are not the companies the IRS is concerned with.”). [↑](#footnote-ref-6)
7. . *See* Notice 2016-66, *supra* note 3; Micro-Captive Listed Transactions and Micro-Captive Transactions of Interest, 88 Fed. Reg. 21,547 (proposed Apr. 11, 2023) (to be codified at 26 C.F.R. pt.1) [hereinafter Proposed Regulations Document]. [↑](#footnote-ref-7)
8. . *See* Notice 2016-66, *supra* note 3. [↑](#footnote-ref-8)
9. . *See* Captive Insurance Times, *supra* note 4. [↑](#footnote-ref-9)
10. . *See* CIC Servs., LLC v. Internal Revenue Serv., 141 S. Ct. 1582 (2021) (holding the Anti-Injunction Act did not bar CIC’s complaint that Notice 2016-66 violated the APA). [↑](#footnote-ref-10)
11. . *See* Proposed Regulations Document, *supra* note 5, at 21,553. [↑](#footnote-ref-11)
12. . *See* Notice 2016-66, *supra* note 3; Treas. Reg. § 6707A(c)(1) (as amended in 2010). [↑](#footnote-ref-12)
13. . *See* Treas. Reg.§ 1.6011-4(b)(2) (as amended in 2010). [↑](#footnote-ref-13)
14. . *See* Captive Insurance Times, *supra* note 4. [↑](#footnote-ref-14)
15. . *See* Treas. Reg. § 6707A(c)(1) (as amended in 2010). [↑](#footnote-ref-15)
16. . *Id.* [↑](#footnote-ref-16)
17. . *See id.* § 6111(c)(3) (as amended in 2005). [↑](#footnote-ref-17)
18. . *See id.* § 6707(a) (as amended in 2004); *see also id.* §6708(a) (as amended in 2004). [↑](#footnote-ref-18)
19. . *See id.* § 1.6011-4(b)(1)–(6) (as amended in 2010). [↑](#footnote-ref-19)
20. . *Id.* § 1.6011-4(b)(2) (as amended in 2010) (emphasis added). [↑](#footnote-ref-20)
21. . *Id.* § 1.6011-4(b)(6) (as amended in 2010). [↑](#footnote-ref-21)
22. . *See id.* § 6707A (as amended in 2010). [↑](#footnote-ref-22)
23. . *Id.* § 6707A(b)(2)(A) (as amended in 2010); Blank & Glogower, *supra* note 1, at 76. [↑](#footnote-ref-23)
24. . Treas. Reg. § 6707A(b)(2)(B) (as amended in 2010). [↑](#footnote-ref-24)
25. . *See id.* § 6707(b)(2) (as amended in 2004). Notably, intentional failures or acts to not disclose listed transactions would raise the percentage to 75% instead of 50% of the income. *Id.* [↑](#footnote-ref-25)
26. . *Id.* § 6707(b)(1) (as amended in 2004). [↑](#footnote-ref-26)
27. . *See id.* § 6707(b)(2) (as amended in 2004). [↑](#footnote-ref-27)
28. . *See id.* § 1.6011-4(d) (as amended in 2010). [↑](#footnote-ref-28)
29. . *See* *id.* § 301.6111-3(d)(1) (as amended in 2011). [↑](#footnote-ref-29)
30. . Blank & Glogower, *supra* note 1, at 76. [↑](#footnote-ref-30)
31. . *Id.* at 77. [↑](#footnote-ref-31)
32. . *See id.* [↑](#footnote-ref-32)
33. . *Id.* [↑](#footnote-ref-33)
34. . *Id.* at 77­–78. [↑](#footnote-ref-34)
35. . *See id.* at 78. [↑](#footnote-ref-35)
36. . *See* CIC Servs., LLC v. Internal Revenue Serv., 592 F. Supp. 3d 677,677, 688 (E.D. Tenn. 2022), *on reconsideration*, No. 3:17-CV-110, 2022 WL 2078036 (E.D. Tenn. June 2, 2022); *see also* CIC Servs., LLC v. Internal Revenue Serv., 141 S. Ct. 1582 (2021) (allowing challenge to proceed over government’s objections based on Anti-Injunction Act); Mann Constr., Inc. v. United States, 27 F.4th 1138, 1142 (6th Cir. 2022). [↑](#footnote-ref-36)
37. . David Slenn, *Micro-Captive Insurance at the Tax Court*, Am. Bar Ass’n (June 10, 2021), https://www.americanbar.org/groups/taxation/publications/abataxtimes\_home/21spr/21spr-ac-slenn-micro-captive-insurance/ [https://perma.cc/36S9-3YZS]. [↑](#footnote-ref-37)
38. . *See* Richard M. Colombik, *Captive Insurance Companies*, Inc.Com (Aug. 13, 2008), http://www.inc.com/law-and-taxation/2008/08/captive\_insurance\_companies.html [https://perma.cc/RLB8-5MNB]. [↑](#footnote-ref-38)
39. . *See* Avrahami v. Comm’r, 149 T.C. 144, 179 (2017). [↑](#footnote-ref-39)
40. . Slenn, *supra* note 35. [↑](#footnote-ref-40)
41. . *See* 11 Mertens Law of Fed. Income Tax’n § 44:24, Westlaw (database updated May 2023). [↑](#footnote-ref-41)
42. . Julia Kagan, *Underwriting Income: What it is, How it Works*, Investopedia (June 27, 2021), https://www.investopedia.com/terms/u/underwriting-income.asp [https://perma.cc/54Z7-KGHT]. [↑](#footnote-ref-42)
43. . *See* 26 U.S.C. § 831(b). [↑](#footnote-ref-43)
44. . *Id.* § 831(b)(2)(A), (E); Proposed Regulations Document, *supra* note 5, at 21,554 (noting that in 2023 the deduction will rise to $2.65 million). [↑](#footnote-ref-44)
45. . *See* Avrahami v. Comm’r, 149 T.C. 144, 179 (2017); *see also* § 831(b)(1). [↑](#footnote-ref-45)
46. . Beckett G. Cantley, *The Forgotten Taxation Landmine: Application of the Accumulated Earnings Tax to I.R.C. § 831(b) Captive Insurance Companies*, 11 Richmond J. Glob. L. & Bus. 159, 162 (2012). [↑](#footnote-ref-46)
47. . *Avrahami*, 149 T.C. at 174 (noting that neither the IRC nor the regulations define “insurance”). [↑](#footnote-ref-47)
48. . *See id.* at 177, 185; *see also* Helvering v. Le Gierse, 312 U.S. 531, 539 (1941). [↑](#footnote-ref-48)
49. . *Avrahami*, 149 T.C. at 177 (citations omitted); *see also Helvering*, 312 U.S. at 539. [↑](#footnote-ref-49)
50. . Drew D. Estes, *Section 831(b) Captive Insurance Companies: Why Policymakers Have It All Wrong*, 44 Cap. U.L. Rev. 723, 727–28 (2016). [↑](#footnote-ref-50)
51. . *Id.* [↑](#footnote-ref-51)
52. . *See* discussion *infra* Section III.A.  [↑](#footnote-ref-52)
53. . Notice 2016-66, *supra* note 3. [↑](#footnote-ref-53)
54. . *See id.* [↑](#footnote-ref-54)
55. . *Id.* [↑](#footnote-ref-55)
56. . *Id.* [↑](#footnote-ref-56)
57. . *Id.* [↑](#footnote-ref-57)
58. . *See infra* notes 60–83 and accompanying text. [↑](#footnote-ref-58)
59. . *See* Notice 2016-66, *supra* note 3. [↑](#footnote-ref-59)
60. . *See id.* [↑](#footnote-ref-60)
61. . *Id.* [↑](#footnote-ref-61)
62. . *Id.* [↑](#footnote-ref-62)
63. . *Id.* [↑](#footnote-ref-63)
64. . *Id.* [↑](#footnote-ref-64)
65. . *Id.* [↑](#footnote-ref-65)
66. . *Id.* [↑](#footnote-ref-66)
67. . *See id.* [↑](#footnote-ref-67)
68. . *See id.* [↑](#footnote-ref-68)
69. . *Id.* [↑](#footnote-ref-69)
70. . *See id.*; I.R.S. News Release IR-2016-25 (Feb. 16, 2016) (describing the characteristics of an “abusive” micro-captive insurance structure). [↑](#footnote-ref-70)
71. . *See* Notice 2016-66, *supra* note 3. [↑](#footnote-ref-71)
72. . *Id.* [↑](#footnote-ref-72)
73. . *Id.* [↑](#footnote-ref-73)
74. . *Id.* [↑](#footnote-ref-74)
75. . *Id.* [↑](#footnote-ref-75)
76. . *See id.* [↑](#footnote-ref-76)
77. . *Id.* [↑](#footnote-ref-77)
78. . *See id.*; Treas. Reg. § 6707 (as amended in 1984); Treas. Reg. § 301.6707-1 (2014). [↑](#footnote-ref-78)
79. . Treas. Reg. § 6707A(b)(2)(B) (as amended in 2004). [↑](#footnote-ref-79)
80. . *Id.* § 6662(a) (as amended in 2020). The accuracy related penalty must meet a certain threshold, such as negligence or a substantial understatement that exceeds an amount deemed substantial by the IRS. *Id.* § 6662(b) (as amended in 2020); *see also* *id.* § 6662(d) (as amended in 2020) (defining substantial understatement). [↑](#footnote-ref-80)
81. . *See id.* § 301.6707-1(a)(1)(i) (2014); *see also id.* § 6708 (as amended in 2004). [↑](#footnote-ref-81)
82. . *Id.* § 301.6707-1(a)(1)(i) (2014); *see also id.* § 6111 (as amended in 2005) (describing information that may be required, such as the transaction and any tax potential benefits derived from the transaction). [↑](#footnote-ref-82)
83. . *Id.* § 6708 (as amended in 2004); *see id.* § 6112 (as amended in 2005). [↑](#footnote-ref-83)
84. . *Id.* § 6708 (as amended in 2004). [↑](#footnote-ref-84)
85. *. See* Captive Insurance Times, *supra* note 4. [↑](#footnote-ref-85)
86. . *Id.* [↑](#footnote-ref-86)
87. . *See generally* Notice 2016-66, *supra* note 3. [↑](#footnote-ref-87)
88. . *Id.* [↑](#footnote-ref-88)
89. . *See id.* [↑](#footnote-ref-89)
90. . *Id.*; *see* Treas. Reg. § 6707 (as amended in 1984). [↑](#footnote-ref-90)
91. . *See* Notice 2016-66, *supra* note 3. [↑](#footnote-ref-91)
92. . Proposed Regulations Document, *supra* note 5, at 21,552. [↑](#footnote-ref-92)
93. . *See generally id.* [↑](#footnote-ref-93)
94. . *See id.* [↑](#footnote-ref-94)
95. . *See id.* at 21,560. [↑](#footnote-ref-95)
96. . *See* discussion *infra* Section III.C. [↑](#footnote-ref-96)
97. . CIC Servs., LLC v. Internal Revenue Serv., 592 F. Supp. 3d 677, 681 (E.D. Tenn. 2022), *on reconsideration*, No. 3:17-CV-110, 2022 WL 2078036 (E.D. Tenn. June 2, 2022). [↑](#footnote-ref-97)
98. . *Id.* [↑](#footnote-ref-98)
99. . *Id.* [↑](#footnote-ref-99)
100. . *Id.* [↑](#footnote-ref-100)
101. . *Id.* [↑](#footnote-ref-101)
102. . *Id.* [↑](#footnote-ref-102)
103. . *Id.* [↑](#footnote-ref-103)
104. . *Id.* at 681­–83. [↑](#footnote-ref-104)
105. . *See id.* at 683. [↑](#footnote-ref-105)
106. . *Id.* [↑](#footnote-ref-106)
107. . *Id.* [↑](#footnote-ref-107)
108. . *See id.* [↑](#footnote-ref-108)
109. . *See id.*; *see also* Mann Constr., Inc. v. United States, 27 F.4th 1138 (6th Cir. 2022). [↑](#footnote-ref-109)
110. . *Mann Constr.*, 27 F.4th at 1143–44. [↑](#footnote-ref-110)
111. . *Id.* at 1141. [↑](#footnote-ref-111)
112. . *Id.* at 1143. [↑](#footnote-ref-112)
113. . *Id.* at 1143–44. [↑](#footnote-ref-113)
114. . *CIC Services*, 592F. Supp. 3d at683. [↑](#footnote-ref-114)
115. . *Id.* [↑](#footnote-ref-115)
116. . *See* 5 U.S.C. § 706(2)(A). [↑](#footnote-ref-116)
117. . *CIC Servs.*, 592F. Supp. 3d at 684 (quoting Dep’t of Com. v. New York, 139 S. Ct. 2551, 2569 (2019)). [↑](#footnote-ref-117)
118. . *See id.* [↑](#footnote-ref-118)
119. . *See id.* at 684–85. [↑](#footnote-ref-119)
120. . *Id.* at 684 (quoting Atrium Med. Ctr. v. U.S. Dep’t of Health & Hum. Servs., 766 F.3d 560, 567 (6th Cir. 2014)). [↑](#footnote-ref-120)
121. . *Id.* (quoting *Atrium Med. Ctr.*, 766 F.3d at 567). [↑](#footnote-ref-121)
122. . *See id.* [↑](#footnote-ref-122)
123. . *See* 26 U.S.C. § 6707A(a); *see also* Treas. Reg. § 1.6011-4(b)(6) (as amended in 2010). [↑](#footnote-ref-123)
124. . *CIC Servs.*, 592F. Supp. 3d at684–85 (quoting Dep’t of Com. v. New York, 139 S. Ct. 2551, 2569 (2019)). [↑](#footnote-ref-124)
125. . *Id.* at 685. [↑](#footnote-ref-125)
126. . *See id.* at 685–87. [↑](#footnote-ref-126)
127. . *See id.* at 685. [↑](#footnote-ref-127)
128. . *Id.* (quoting Notice 2016-66, *supra* note 3)(emphasis added). [↑](#footnote-ref-128)
129. . *Id.* (quoting Notice 2016-66, *supra* note 3) (emphasis added).   [↑](#footnote-ref-129)
130. . *Id.* [↑](#footnote-ref-130)
131. . *Id.* [↑](#footnote-ref-131)
132. . *See id.* at 686–87. [↑](#footnote-ref-132)
133. . *See id*. at 686. [↑](#footnote-ref-133)
134. . *See id.* [↑](#footnote-ref-134)
135. . *See id.* [↑](#footnote-ref-135)
136. . *See id.* at 686–87. [↑](#footnote-ref-136)
137. . *Id.* at 687. [↑](#footnote-ref-137)
138. . *See id.* at 687–88. [↑](#footnote-ref-138)
139. . *Id.* at 687 (citing 5 U.S.C. § 706(2)(A)). [↑](#footnote-ref-139)
140. . *See* Mann Constr., Inc. v. United States, 27 F.4th 1138, 1143 (6th Cir. 2022).   [↑](#footnote-ref-140)
141. . *CIC Servs.*, 592F. Supp. 3d at687 (quoting Allied-Signal, Inc. v. U.S. Nuclear Regul. Comm’n., 988 F.2d 146, 150 (D.C. Cir. 1993)). [↑](#footnote-ref-141)
142. . *Id.* [↑](#footnote-ref-142)
143. . *See id.* at 688; *see also* CIC Servs., LLC v. Internal Revenue Serv., 925 F.3d 247, 258 (6th Cir. 2019), *rev’d and remanded*, 141 S. Ct. 1582 (2021). [↑](#footnote-ref-143)
144. . *CIC Servs.*, 592F. Supp. 3d at688. [↑](#footnote-ref-144)
145. . *Id.* [↑](#footnote-ref-145)
146. . Proposed Regulations Document, *supra* note 5, at 21,553. [↑](#footnote-ref-146)
147. . *See* discussion *infra* Section IV.A. [↑](#footnote-ref-147)
148. . *See* discussion *infra* Section IV.A. [↑](#footnote-ref-148)
149. . *See* Prop. Treas. Reg. § 1.6011-10(a), 88 Fed. Reg. 21,547, 21,561 (Apr. 11, 2023); *see also* Prop. Treas. Reg. § 1.6011-11(a), 88 Fed. Reg. 21,547, 21,563 (Apr. 11, 2023). [↑](#footnote-ref-149)
150. . *See* Notice 2016-66, *supra* note 3. [↑](#footnote-ref-150)
151. . *See* Proposed Regulations Document, *supra* note 5, at 21,554. [↑](#footnote-ref-151)
152. . *See* Prop. Treas. Reg. § 1.6011-10(a), 88 Fed. Reg. 21,547, 21,561 (Apr. 11, 2023); *see also* Notice 2016-66, *supra* note 3. [↑](#footnote-ref-152)
153. . *See* Prop. Treas. Reg. § 1.6011-10(c)(1), 88 Fed. Reg. 21,547, 21,562 (Apr. 11, 2023). [↑](#footnote-ref-153)
154. . *See* Prop. Treas. Reg. § 1.6011-10(c)(2), 88 Fed. Reg. 21,547, 21,562 (Apr. 11, 2023).  [↑](#footnote-ref-154)
155. . *See* Prop. Treas. Reg. § 1.6011-11(a), 88 Fed. Reg. 21547, 21563 (Apr. 11, 2023). [↑](#footnote-ref-155)
156. . *See* Prop. Treas. Reg. § 1.6011-10(b)(1)(iii), 88 Fed. Reg. 21547, 21561 (Apr. 11, 2023); *see also* Proposed Regulations Document, *supra* note 5, at 21,554; Trina Pinneau, *IRS Issues Proposed Regulations on Micro-captive Transactions*, RSM (Apr. 12, 2023), https://rsmus.com/insights/tax-alerts/2023/IRS-issues-proposed-regulations-micro-captive-transactions.html [perma.cc/W8KM-ZJBV]. [↑](#footnote-ref-156)
157. . Prop. Treas. Reg. § 1.6011-10(b)(1)(iii), 88 Fed. Reg. 21,547, 21,561 (Apr. 11, 2023); *see* Notice 2016-66, *supra* note 3. [↑](#footnote-ref-157)
158. . *See* Proposed Regulations Document, *supra* note 5, at 21,555. [↑](#footnote-ref-158)
159. . *See id.* at 21,556–57. [↑](#footnote-ref-159)
160. . *See* Prop. Treas. Reg. § 1.6011-10(c)(1), 88 Fed. Reg. 21,547, 21,562 (Apr. 11, 2023). [↑](#footnote-ref-160)
161. . *See id.* [↑](#footnote-ref-161)
162. . Prop. Treas. Reg. § 1.6011-10(b)(2)(i), 88 Fed. Reg. 21,547, 21,561 (Apr. 11, 2023). [↑](#footnote-ref-162)
163. . *See* Proposed Regulations Document, *supra* note 5, at 21,557. [↑](#footnote-ref-163)
164. . *See* Prop. Treas. Reg. § 1.6011-10(c)(2), 88 Fed. Reg. 21,547, 21,562 (Apr. 11, 2023). [↑](#footnote-ref-164)
165. *. Id.* [↑](#footnote-ref-165)
166. . *Compare* *id.*, *with* Notice 2016-66, *supra* note 3. [↑](#footnote-ref-166)
167. . *See* Prop. Treas. Reg. § 1.6011-10(b)(2)(ii), 88 Fed. Reg. 21,547, 21,561 (Apr. 11, 2023).  [↑](#footnote-ref-167)
168. . *See* Proposed Regulations Document, *supra* note 5, at 21,557. [↑](#footnote-ref-168)
169. . *See* Prop. Treas. Reg. § 1.6011-10(c)(2), 88 Fed. Reg. 21,547, 21,562 (Apr. 11, 2023) (listed transactions); Prop. Treas. Reg. § 1.6011-11(c), 88 Fed. Reg. 21,547, 21,563 (Apr. 11, 2023) (transactions of interest). [↑](#footnote-ref-169)
170. . *See* Proposed Regulations Document, *supra* note 5, at 21,557. [↑](#footnote-ref-170)
171. . *Id.* [↑](#footnote-ref-171)
172. . *Id.* [↑](#footnote-ref-172)
173. . *Id.* [↑](#footnote-ref-173)
174. . *Id.* [↑](#footnote-ref-174)
175. . *See* Prop. Treas. Reg. § 1.6011-10(d), 88 Fed. Reg. 21,547, 21,562 (Apr. 11, 2023). [↑](#footnote-ref-175)
176. . *See* Prop. Treas. Reg. § 1.6011-10(d)(2), 88 Fed. Reg. 21,547, 21,562 (Apr. 11, 2023). [↑](#footnote-ref-176)
177. . *See* Prop. Treas. Reg. § 1.6011-10(d)(1), 88 Fed. Reg. 21,547, 21,562 (Apr. 11, 2023). [↑](#footnote-ref-177)
178. . *See* Prop. Treas. Reg. § 1.6011-11(d)(1)–(2), 88 Fed. Reg. 21,547, 21,563 (Apr. 11, 2023). [↑](#footnote-ref-178)
179. . *See* Prop. Treas. Reg. § 1.6011-11(a), 88 Fed. Reg. 21,547, 21,563 (Apr. 11, 2023). [↑](#footnote-ref-179)
180. . *See* Prop. Treas. Reg. § 1.6011-11(c), 88 Fed. Reg. 21,547, 21,563 (Apr. 11, 2023). [↑](#footnote-ref-180)
181. . Prop. Treas. Reg. § 1.6011-11(b)(2), 88 Fed. Reg. 21,547, 21,563 (Apr. 11, 2023). [↑](#footnote-ref-181)
182. . Proposed Regulations Document, *supra* note 5, at 21,558. [↑](#footnote-ref-182)
183. . *See* Prop. Treas. Reg. §1.6011-11(d)(1)–(2), 88 Fed. Reg. 21,547, 21,563 (Apr. 11, 2023) (transactions of interest); Prop. Treas. Reg. § 1.6011–10(d), 88 Fed. Reg. 21,547, 21,562 (Apr. 11, 2023) (listed transactions). [↑](#footnote-ref-183)
184. . *See* Prop. Treas. Reg. § 1.6011-11(d)(3), 88 Fed. Reg. 21,547, 21,563 (Apr. 11, 2023). [↑](#footnote-ref-184)
185. . Proposed Regulations Document, *supra* note 5, at 21,556. [↑](#footnote-ref-185)
186. . *See* Prop. Treas. Reg. § 1.6011-11(f), 88 Fed. Reg. 21,547, 21,564 (Apr. 11, 2023) (transactions of interest); Prop. Treas. Reg. §1.6011-10(f), 88 Fed. Reg. 21,547, 21,562 (Apr. 11, 2023) (listed transactions). [↑](#footnote-ref-186)
187. . Proposed Regulations Document, *supra* note 5, at 21558. [↑](#footnote-ref-187)
188. . *Id.* [↑](#footnote-ref-188)
189. . *Id.* [↑](#footnote-ref-189)
190. . *See* Prop. Treas. Reg. § 1.6011-10(e)(2), 88 Fed. Reg. 21,547, 21,562 (Apr. 11, 2023) (listed transactions); Prop. Treas. Reg. § 1.6011-11(e)(2), 88 Fed. Reg. 21,547, 21,563–64 (Apr. 11, 2023) (transactions of interest). [↑](#footnote-ref-190)
191. . *See* Prop. Treas. Reg. § 1.6011-10(e)(2), 88 Fed. Reg. 21,547, 21,562 (Apr. 11, 2023) (listed transactions); Prop. Treas. Reg. § 1.6011-11(e)(2), 88 Fed. Reg. 21,547, 21,563–64 (Apr. 11, 2023) (transactions of interest). [↑](#footnote-ref-191)
192. . *See* Prop. Treas. Reg. § 1.6011-10(e)(2), 88 Fed. Reg. 21,547, 21,562 (Apr. 11, 2023) (listed transactions); Prop. Treas. Reg. § 1.6011-11(e)(2), 88 Fed. Reg. 21,547, 21,563–64 (Apr. 11, 2023) (transactions of interest). [↑](#footnote-ref-192)
193. . *See* Prop. Treas. Reg. § 1.6011-10(e)(2), 88 Fed. Reg. 21,547, 21,562 (Apr. 11, 2023) (listed transactions); Prop. Treas. Reg. § 1.6011-11(e)(2), 88 Fed. Reg. 21,547, 21,563–64 (Apr. 11, 2023) (transactions of interest). [↑](#footnote-ref-193)
194. . *See* Prop. Treas. Reg. § 1.6011-10(e)(2), 88 Fed. Reg. 21,547, 21,562 (Apr. 11, 2023) (listed transactions); Prop. Treas. Reg. § 1.6011-11(e)(2), 88 Fed. Reg. 21,547, 21,563–64 (Apr. 11, 2023) (transactions of interest).  [↑](#footnote-ref-194)
195. . *See* Proposed Regulations Document, *supra* note 5, at 21,559. [↑](#footnote-ref-195)
196. . *See generally* Treas. Reg. §§ 6700–6701 (as amended in 2018). [↑](#footnote-ref-196)
197. . *See generally id.* § 6501(c)(10) (as amended in 2022). [↑](#footnote-ref-197)
198. . *See* Proposed Regulations Document, *supra* note 5, at 21,550. [↑](#footnote-ref-198)
199. . Treas. Reg. § 6707A(b)(2)(A) (as amended in 2010). [↑](#footnote-ref-199)
200. . *See id.* § 6662(a) (as amended in 2020). [↑](#footnote-ref-200)
201. . *See id.* [↑](#footnote-ref-201)
202. . *See* Proposed Regulations Document, *supra* note 5, at 21,559. [↑](#footnote-ref-202)
203. . *See* Treas. Reg. § 6707(b)(2) (as amended in 2004). [↑](#footnote-ref-203)
204. . *See id.* § 6708 (as amended in 2004); *see generally id.* § 6112 (as amended in 2005). [↑](#footnote-ref-204)
205. . *See id.* § 6112 (as amended in 2005); *id.* § 6708(a)(1) (as amended in 2004). [↑](#footnote-ref-205)
206. . *Id.* § 6708(a)(2) (as amended in 2004). [↑](#footnote-ref-206)
207. . *See* Proposed Regulations Document, *supra* note 5, at 21,559; Treas. Reg. § 6700(a) (as amended in 2018). [↑](#footnote-ref-207)
208. . Treas. Reg. § 6700(a) (as amended in 2018). There would be a lesser penalty than $1,000 if the income derived from the tax abuse scheme was less than $1,000.There would be a lesser penalty than $1,000 if the income derived from the tax abuse scheme was less than $1,000. *Id.*  [↑](#footnote-ref-208)
209. . *See* *id.*  [↑](#footnote-ref-209)
210. . *See id.* § 6700(b) (as amended in 2018). [↑](#footnote-ref-210)
211. . *See id.* § 6700(a)(2)(B) (as amended in 2018). [↑](#footnote-ref-211)
212. . *See id.* § 6700(a)(2) (as amended in 2018). [↑](#footnote-ref-212)
213. . *See id.* [↑](#footnote-ref-213)
214. . *See id.* [↑](#footnote-ref-214)
215. . *See id.* [↑](#footnote-ref-215)
216. . *See* Proposed Regulations Document, *supra* note 5, at 21,559. [↑](#footnote-ref-216)
217. . *See* Treas. Reg. § 6701(a)–(b) (as amended in 1989). [↑](#footnote-ref-217)
218. . *See id.* § 6701(d) (as amended in 1989). [↑](#footnote-ref-218)
219. . *See id.* § 6701(a)–(b) (as amended in 1989). [↑](#footnote-ref-219)
220. . *See id.* § 6501(c)(10) (as amended in 2022). [↑](#footnote-ref-220)
221. . *See id.* [↑](#footnote-ref-221)
222. . *See id.* [↑](#footnote-ref-222)
223. . *See id.* § 6501(c)(10)(A)–(B) (as amended in 2022). [↑](#footnote-ref-223)
224. . *See* discussion *supra* Section IV.D; Jay Adkisson, *U.S. Treasury Department Issues Proposed Regulations to Finally Eviscerate Microcaptive Tax Shelters*, Forbes (Apr. 11, 2023, 1:24 PM EDT), https://www.forbes.com/sites/jayadkisson/2023/04/11/us-treasury-department-issues-proposed-regulations-to-finally-eviscerate-microcaptive-tax-shelters [https://perma.cc/FSN6-W2U2**].** [↑](#footnote-ref-224)
225. . *See* discussion *supra* Section IV.D. [↑](#footnote-ref-225)
226. *. See* Treas. Reg. § 6707(b) (as amended in 2004); *id.* § 6707A(b)(2) (as amended in 2010). Additionally, there is a $150,000 increase for corporate taxpayers. *See id.* § 6707A(b)(2) (as amended in 2010). [↑](#footnote-ref-226)
227. . *See id.* § 6701 (as amended in 1989). [↑](#footnote-ref-227)
228. . *See id.* § 6701(a)–(b) (as amended in 1989). [↑](#footnote-ref-228)
229. . *See* Adkisson, *supra* note 222. [↑](#footnote-ref-229)
230. . *See id.* [↑](#footnote-ref-230)
231. . *See* Treas. Reg. § 6111 (as amended in 2005); *id.* § 6707 (as amended in 2004); Adkisson, *supra* note 222. [↑](#footnote-ref-231)
232. . *See* Adkisson, *supra* note 222. [↑](#footnote-ref-232)
233. . *See* Treas. Reg. § 6111 (as amended in 2005); *id.* § 6112 (as amended in 2005). [↑](#footnote-ref-233)
234. . *Id.* § 6112 (as amended in 2005). [↑](#footnote-ref-234)
235. . *Id.* § 6662(a)–(b) (as amended in 2022). [↑](#footnote-ref-235)
236. . Blank & Glogower, *supra* note 1, at 76. [↑](#footnote-ref-236)
237. . *See* discussion *supra* Section III.B. [↑](#footnote-ref-237)
238. . *See* discussion *supra* Section III.B. [↑](#footnote-ref-238)
239. . *See* Proposed Regulations Document, *supra* note 5, at 21,561. [↑](#footnote-ref-239)
240. . *Id*. [↑](#footnote-ref-240)
241. . *Id.* [↑](#footnote-ref-241)
242. . *See id.* at 21,547–59. [↑](#footnote-ref-242)
243. . *Id*. at. 21,552; *see generally* Treas. Reg. § 833 (as amended in 2014). [↑](#footnote-ref-243)
244. . *See* Treas. Reg. § 833(c)(5) (as amended in 2014). [↑](#footnote-ref-244)
245. . Proposed Regulations Document, *supra* note 5, at 21,552. [↑](#footnote-ref-245)
246. . *See id.* at 21,557. [↑](#footnote-ref-246)
247. . *See id.* [↑](#footnote-ref-247)
248. . *See* *id.* at 21,560. [↑](#footnote-ref-248)
249. . *See* *id.* [↑](#footnote-ref-249)
250. . *See* *id.* [↑](#footnote-ref-250)
251. . *See* *id.* [↑](#footnote-ref-251)
252. . *See TCIA Submits Comments to IRS on Microcaptives*, Captive Int’l (June 22, 2023), <https://www.captiveinternational.com/news/tcia-submits-comments-to-irs-on-microca>

     ptives-6247 **[https://perma.cc/QH7B-B3B5]**; Frances Jones, *Oklahoma Insurance Department Submits Comment on Proposed IRS Captive Regulations*, Captive Ins. Times (June 22, 2023), <https://www.captiveinsurancetimes.com/captiveinsurancenews/industryarticle.php?article_id=8508&navigationaction=industrynews&newssection=industry> **[https://perma.cc/2STX-KXH5].** [↑](#footnote-ref-252)