

May 6, 2015

CC:PA:LPD:PR (REG-108214-15)

Internal Revenue Service
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: RIN 1545-BM69 – Exception from Passive Income for Certain Foreign Insurance Companies

The Captive Insurance Companies Association (CICA) is making this submission pursuant to the invitation for comments in the above referenced matter published in the Federal Register on April 24, 2015. In addition, CICA is requesting a public hearing in accordance with the invitation to request a public hearing.

CICA is the leading domicile neutral trade association representing the captive insurance industry. CICA represents hundreds of members and CICA's members are individual captive insurance companies, companies that own and utilize captives, and service providers to captives, such as actuaries, accountants, attorneys and insurance consultants. A majority of our members are based in the United States and are important contributors to the US economy by making insurance risk management more efficient for businesses, public entities, and not for profit organizations.

After consulting with a number of tax experts, we believe that few, if any, of CICA's members will be directly affected if these regulations are finalized in the form proposed. However, **CICA is concerned about the language in the proposed regulation attempting to define "active conduct" of an insurance business that excludes the officers and employees of related entities and independent contractors.** The vast majority of our member insurance companies operate through the use of independent contractors to provide support services to their insurance business.

To adopt the proposed regulation as currently drafted would impose an inappropriate standard that, if applied more broadly in the future, would be unfair and completely contrary to the manner in which thousands of captive insurers operate. Moreover, **the requirement that the insurance company have employees is contrary to current IRS practice.** For example, Rev. Rul. 2002-89, 2002-2 C.B. 984 involves S, an insurance company, and states: "In implementing the arrangement, S may perform all necessary administrative tasks, or it may outsource those tasks at prevailing commercial market rates."

We also believe that there is already adequate statutory authority to address the level of capital necessary to conduct an insurance company. Congress faced a comparable question in 2004. At

that time, there was a concern that some insurance companies that were exempt under section 501(c)(15) had investments that were too extensive. Congress resolved this by enacting section 831(c), which together with section 816, requires that more than half the insurance company's business be from insurance and reinsurance. Determining the proper amount of capital would require a very intensive analysis of the facts and circumstances. In addressing the current concern of too much investment by an insurance company, we believe that it is better to use the current statutory standard that applies to all insurance companies, rather than introduce a new regulation that applies to only a select group of insurance companies.

For these reasons, the Captive Insurance Companies Association is opposed to the adoption of the proposed rules as overly broad. **We specifically object to the proposed definition of “active conduct” which is unnecessary to achieve the desired effect set forth in the “Background and Explanation of Provisions” portion of REG-108214-15.**

Sincerely,



Dennis P. Harwick
PRESIDENT

CICA Comments to IRS PFIC Proposed Rule RIN a545-BM9 5-6-15.doc

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