

September 9, 2019

CC:PA:LPD:PR (REG-105474-18)

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 July 11, 2019. 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 a number of CICA's members may be directly affected if these regulations are finalized in the form proposed. Thus, **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 certain related entities and independent contractors and imposes an active conduct percentage.** The vast majority of our member insurance companies operate through the use of independent contractors to provide support services to their insurance business. In addition, the active conduct percentage proposed by Treasury does not take into account how prudent insurance companies operate, which includes the use of brokers and investment managers. In addition, it is inappropriate to impose such a standard on insurance companies when other industries are not required to meet such a test to be considered active.

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, which provides a safe harbor, 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.”

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-105474-18.**

Sincerely,

A handwritten signature in black ink that reads "Daniel D. Towle". The signature is written in a cursive style with a large, sweeping initial "D".

Daniel D. Towle  
PRESIDENT