

PRESENTED AT

The University of Texas School of Law
69th Annual Taxation Conference

December 1-2, 2021
Austin, TX

**Micro-Captive Insurance
(Letter 6239)**

Charles J. Muller

Author Contact Information:
Charles J. Muller
Chamberlain, Hrdlicka, White, Williams
& Aughtry, P.C.
San Antonio, TX

chad.muller@chamberlainlaw.com
210.507.6505



Department of the Treasury
Internal Revenue Service

Date: ____

Insured taxpayer ID number:

Tax years:

Person to contact:

Contact address:

Proposed Resolution for Micro-Captive Insurance Transactions

Dear [REDACTED]:

Why you're receiving this letter

As you know, we're auditing [REDACTED] for its participation in micro-captive insurance transactions for the tax years shown above. This letter is an offer to resolve your micro-captive insurance transactions and those of related parties.

Our proposed resolution is based on the terms outlined in the enclosed Attachment 1, Micro-Captive Insurance Resolution Tenns. We've also enclosed the penalty affidavits that we've described in Attachment 1, Section 2e.

Why we're proposing this resolution

IRS has identified micro-captive insurance as a significant compliance concern. Since 2014, the IRS has included micro-captive insurance as a potential tax scam in its annual "Dirty Dozen" list of tax scams. In 2016, the Treasury Department and IRS published a Transaction of Interest Notice that identified certain micro-captive insurance transactions as having the potential for tax avoidance and evasion, and imposed reporting requirements on taxpayers who participated in these transactions.

The IRS has also litigated and won the following United States Tax Court cases involving micro-captive insurance transactions:

- Avrahami v. Commissioner, 149 T.C. 144 (2017)
- Reserve Mechanical Corp. v. Commissioner, T.C. Memo 2018-86
- Syzygy Insurance Co., Inc. v. Commissioner, T.C. Memo 2019-34

Although the IRS expects to also prevail in other pending micro-captive insurance cases, we're offering resolution for your micro-captive insurance transactions to advance broader tax administration and compliance objectives.

What you need to do to accept our offer

Sign, initial and return Attachment 1 to the contact person shown above within 30 days from the date of this letter, to confirm your acceptance of the terms outlined in Attachment 1.

What'll happen if you don't accept our offer

We'll continue to audit your transactions under our normal procedures.

Audit results may include:

- Full disallowance of your captive insurance deductions.
- Inclusion of income by the captive.
- Penalties which could include the 40% accuracy-related penalty under Internal Revenue Code Section 6662(i).

If enough time remains on the statute of limitations after we complete your audit, you can have your case reviewed by the IRS Independent Office of Appeals. However, Appeals is aware of the terms in Attachment 1, and views them to generally reflect taxpayer litigation risks. Therefore, taxpayers shouldn't expect to receive better terms in Appeals than those offered under this resolution offer.

You may also petition the United States Tax Court or file an action in the United States District Court.

What you can do if you need more time to consider this offer

Write to the contact person shown above to request another 30 days. However, we'll only approve one 30-day extension.

If you have questions, you can call the contact person shown above.

Thank you for your cooperation.

Sincerely,

A large black rectangular redaction box covering the signature and name of the sender.

Enclosures:

Attachment 1

Penalty Affidavits

Also available as part of the eCourse

[2021 Taxation eConference](#)

First appeared as part of the conference materials for the
69th Annual Taxation Conference session

"What Does Enforcement Look Like Today?"