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Congress of the United States
House of Representatives
Washington, DC 20515-4324

December 6, 2023

Commissioner Daniel Werfel
Internal Revenue Service
1111 Constitution Ave., NW
Washington, D.C. 20224

Re: IRC §831(b) Enforcement

Dear Commissioner Werfel:

As members of the House Ways and Means Committee we are writing to reiterate our strong support for small captive insurance.

Congress enacted the precursor to Internal Revenue Code (IRC) section 831(b) in 1916 to provide an income tax exemption for small insurance carriers. The Tax Reform Act of 1986 moved small insurance income tax exclusion to IRC section 831(b), expanded its availability, and clarified the requirements for a small captive insurance company to elect to be taxed only on its investment income. Congress most recently signaled its intent that the benefits of captive insurance remain available to small and medium U.S. businesses when it enacted the Protecting Americans From Tax Hikes (PATH) Act in 2015. That statute nearly doubled the maximum annual premium income that an electing insurance company may have, indexed that new premium limitation amount to inflation, and incorporated provisions designed to limit areas of suspected abuse relating to estate planning.

Section 831(b) ensures that small businesses can accumulate reserves sufficient to cover risks that they cannot insure, or cannot afford to insure, via traditional commercial insurance. This includes rare, but potentially catastrophic risks. It provides competition and choice to small businesses located in underserved and rural communities, which is critical as commercial property and casualty insurers are pulling out of markets and dramatically increasing premiums and/or deductibles.

The IRS appears to be engaged in a concerted effort to dissuade new entrants into the small captive insurance market and drive out those already involved in the industry by alleging systematic and undefined abuses; imposing overly broad, potentially duplicative, and expensive reporting and disclosure requirements on all participants in small captive insurance; failing to make any good faith effort to restrict its enforcement actions to fraudulent or abusive small captives; and targeting the entire industry via a nationwide dragnet audit program. Most recently, the Notice of Proposed Rulemaking

that the IRS issued on April 10 (REG-109309-22) would effectively eliminate the section 831(b) election for all or most small captive insurance companies.

Congress has long supported, and continues to support, the policy of providing a tax benefit to small businesses that incentivizes the formation of small captive insurance companies to manage risk. The IRS may not eliminate laws that it finds inconvenient to administer or somehow troublesome, nor may it legislate via regulation.

Treasury and the IRS are harming the American economy by their misguided effort to eradicate small captive insurance. We urge you to reconsider this approach and work with Congress, small captive insurance companies, and related stakeholders to develop a mutually-agreeable and fair path forward.

Sincerely,



Beth Van Duyne
Member of Congress



Brad R. Wenstrup, D.P.M.
Member of Congress



Ron Estes
Member of Congress



Carol Miller
Member of Congress



David Kustoff
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