



# SIIA Captive Advocacy

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# SIIA Captive Advocacy

- **Industry Narratives/Thought Leadership**
- **Court Briefs & Industry Support**
- **Owner Engagement/Townhalls**
- **Regulatory & Legislative Impacts**
- **Tax Policy**
  - **Tax Gap**
  - **Corporate Tax Increases**



# SIIA 2021 Captive Industry Survey

## Formations & Closures

***Trend: Captive formation growth outpaced captive closures***

- Average Formations: 28
- Average Closures: 20

## COVID Claims

***Trend: Captive insurance is paying a large majority of COVID-related claims.***

- Of COVID claims submitted, managers reported 80.5% paid claims on average
- The average captive manager reported 75 COVID-related
- The highest COVID-related claim reported: \$2million
- Average COVID-related claim reported: \$650,000

# SIIA 2021 Captive Survey Key Findings

## IRS Activities

- 35% of respondent captives currently under audit by the IRS.
- Despite IRS pressure and regulatory burdens, captive owners remain hesitant to take the IRS Global Settlement Offer.
  - Managers reported that over 95% of clients chose not to settle.

# Captive Policy Trends

Importance of Captive Literacy

Owner Involvement

Resiliency/ Hard Market

COVID-19 Impacts

Emerging Risks

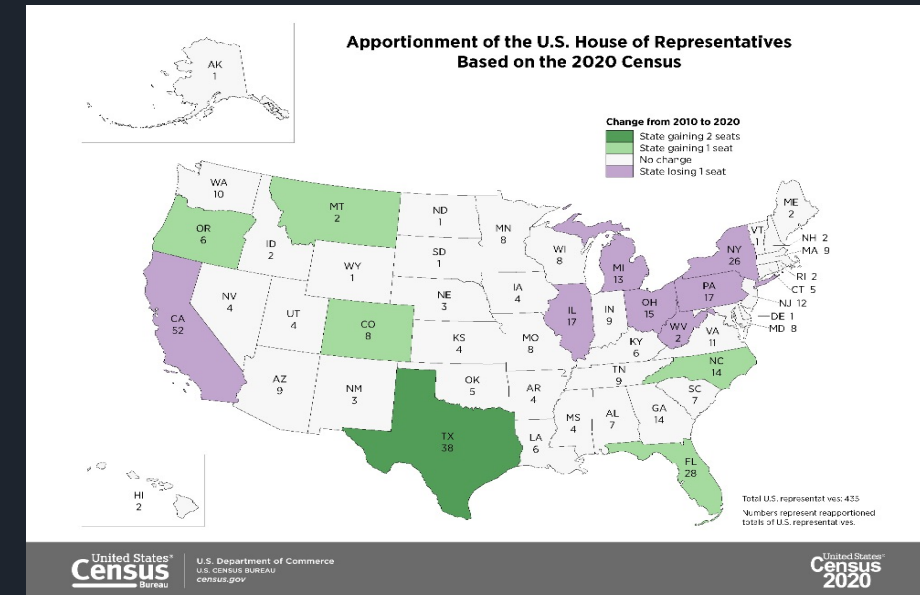
Tax & Revenue Implications



# 2022 Midterms

## Kitchen Table Focus: Spending, Inflation & the Economy

- **President's Popularity**
  - **26 - Average # seats lost by President's Party**
- **Trapped by the Base**
- **Key retirements in House and Senate**
- **2021 Census**
  - **Gain: TX (+2), FL, NC, OR, CO, MT**
  - **Lost: CA, NY, IL, PA, OH, MI, WV**



# Government Spending

Legislation	2020 Cost	% GDP
American Rescue Plan (2021)	\$1.9 Trillion	9.1%
Bipartisan Infrastructure (2021)	\$1.2 Billion	7%
Reconciliation Bill (2021)	\$1.75 Trillion (?)	8.9%
CARES Act (2020)	\$2.02 Trillion	10.2%
Tax Cuts & Jobs Act (2017)	\$1.9-3.0 Trillion	
Marshall Plan (1948)	\$1.03 Trillion	5.2%
New Deal (1930)	\$835 Billion	12.6%

# Congressional Reconciliation: Tax Provisions

- IRS Enforcement Budget Increase - \$79 billion - \$44.9 billion for enforcement
- 15% minimum tax on corporate profits ( corporations over \$1 billion in profits
- Current estate and gift tax exclusion under temporary law still cut in half until 2026.
- Estates and irrevocable trusts to new income tax surcharges
- Surtax of 5% on income in excess of \$10M for individuals/ + 3% surtax above \$25M.
  - Trusts & estate income over \$200,000 subject to 5% surcharge, + 3% surtax at \$500,000 income level.
- GILTI determined separately with respect to each country in which any CFC taxable unit of US shareholder is a tax resident.
- Deduction for Foreign Source Portion of Dividends Limited to CFCs
- Increases BEAT rate to 18% by 2025
- 3.8% Medicare surtax to all income from pass-through businesses

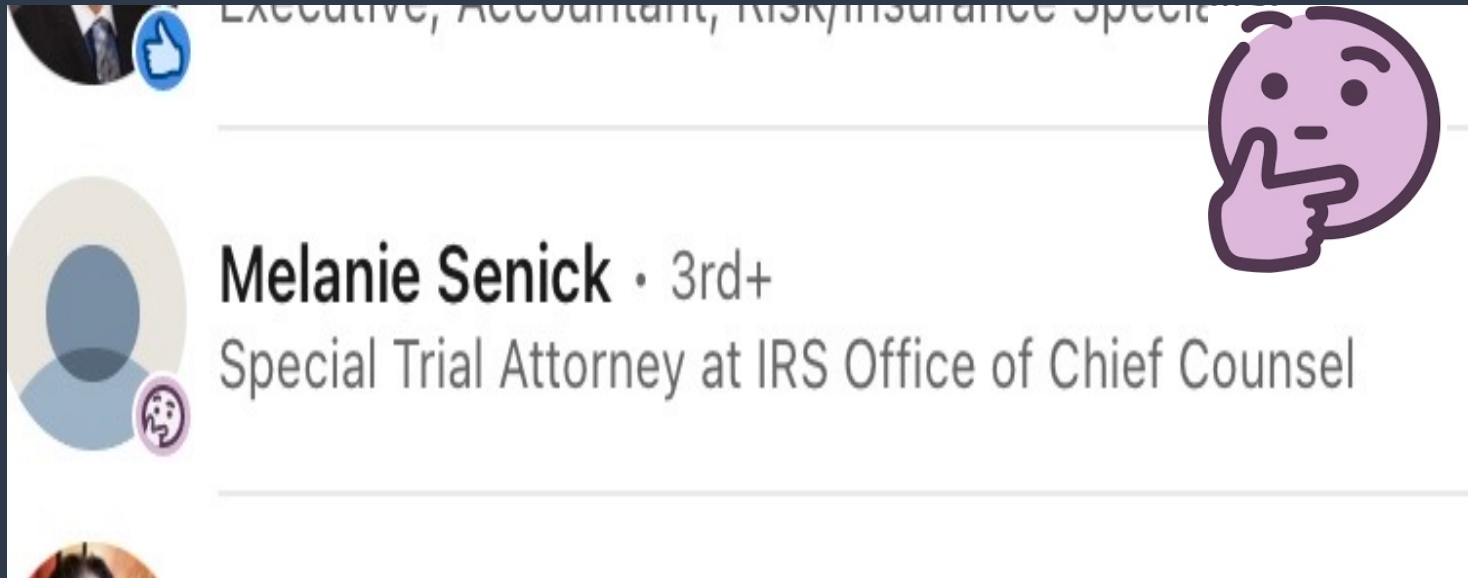


# Tax & the Biden Administration



- **Obama 2.0**
- **Treasury**
  - **Sec. Janet Yellen**
  - **Lily Batchelder - Asst. Sec. Tax Policy**
    - **Senate Finance Counsel, NEC, IRS Transition**
  - **Mark Mazur - Dep. Asst. Sec. Tax Policy (Temporary)**

# IRS 'Takes'



## Ryan Work

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1yr • Edited •

Thank you to Sen. Gardner for taking a stance on captive issues being faced with the IRS. This is what industry and captive owner engagement can accomplish. Kudos to SIIA Member [Rick Eldridge](#) for driving this. [#captiveinsurance](#) [#SIIA](#)



## Colorado Senator calls on IRS to halt review of micro captives

[captiveinsurancetimes.com](#) • 2 min read

33

1 comment • 1,699 views



# Captive Tax Environment 2021

- **Trend: Increased IRS Coordination, Resources and Activity**
- **IRS Abuse Focus Areas:**
  - **Small Captives (Return to Dirty Dozen)**
  - **Syndicated Conservation Easements.**
- **IRS Resource Coordination - Audits, appeals, litigation**
- **IRS Court Activity**
- **IRS Chief Counsel Memos**
  - **2021-34016 (August 2021)**
  - **Aimed at promoters of micro-captive insurance transactions.**
  - **Promoter must clearly and unambiguously inform its agents, prospective clients, and current clients of risk related to potential tax shelter.**
  - **Failure to warn clients amounts to making false tax statement subject to promoter penalties.**

# Recent IRS Activity

## IRS Notice 2020-226

- New audits (12 audit teams) and Letters to Material Advisors
- Referenced the Fraud Enforcement Office, Promoter Office, Criminal Investigation and Office of Professional Responsibility
- Penalties for similar programs (e.g., Puerto Rico)

## IRS Notice 2020-241

- Initiated second settlement initiative, more restrictions than first settlement
- Taxpayers should not expect to receive a better deal
- IRS: "relentless agencywide commitment to combat abusive transactions"

# Captive Timeline

## 2015 - PATH Act

## 2019

- First IRS Settlement Initiative

## 2020

- CIC Supreme Court Brief
- Jan - IRS: 80% took settlement, 12 new audit teams will conduct 1000s of audits
- March - Letter 6336 - Taxpayer captive review and response
- July - IRS issued 6112 letters to captive managers and material advisors
- October - IR 2020-226 - Letter deadline, independent tax advisors, PR abuse
- IR - 2020-241 - Second settlement offer

## 2021

- IRS Caylor win, withholding 30% on premiums paid to foreign captives
- SCOTUS remand of CIC Case
- April - New IRS Office of Promoter Investigations
- July - Micro captives back on "Dirty Dozen" list

# CIC Services vs. IRS – U.S. Supreme Court

- **CIC Services challenged lawfulness and onerous penalties under IRS Notice 2016-66**
- **IRS argued suit barred by the Anti-Injunction Act as it would “restrain” assessment and collection of civil penalties.**

## At Issue: Notice 2016-66

- **Listed certain micro-captives as transactions of interest, imposed penalties on any advisor who failed to file the required form.**
- **Notice issued without following formal notice and comment process in the APA.**

## SCOTUS Unanimously Reversed and Remanded Lower Court Decision

- **Decision gives tax advisors a legal right to contest IRS enforcement of Notices that seek to impose penalties.**
- **Justice Kagan noted that a reporting requirement is not a tax and setting aside reporting rule does not interfere with the IRS’s ability to assess or collect taxes. Questioned that advisors must pay the entire amount that the IRS has assessed in order to get to court in the first place.**

# State Activity

## What to Know:

- **States Looking at Captive Premium Taxes to Boost Revenue**
- **Some State Law Mirrors IRS Reportable Transaction Designation**

## Colorado

- Captive taxable for corporate income purposes if 50% or less of receipts are from insurance premiums.

## Minnesota

- 2% direct procurement premium tax for insurance for MN based insured from a non-admitted insurer.
- Revised tax return form specifically identifies captives as non-admitted insurers for purposes of the tax.

## Washington

- Captive Ballot Initiative – Non-Binding Advisory Vote 38 on SB 5315
- “Eligible” captive insurer must pay 2% of directly procured risk WA-based risk + \$2,500 registration fee
- Eligible captive is:
  - Wholly owned subsidiary insuring risks of owner/affiliates & principal place of business in the state
  - Captive’s assets exceed its liabilities by at least \$1 million; and
  - Captive maintains a captive license in its domiciliary jurisdiction.
- Retroactive premium tax for any period after January 1, 2011.
  - Taxes due prior to July 1, 2021, are not subject to penalties or interest.

# SIIA Activities



**CAPTIVE CODE OF  
CONDUCT**

**INDUSTRY SURVEY**



**POLICYMAKER TOWN  
HALLS**



**WEBINARS**



**GRASSROOTS/  
ADVOCACY**



# Final Thoughts

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Questions?

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