

INFORMATION REGARDING IRS LETTER 6336

The following is informational only and does not constitute advice. Please forward this information to your independent tax advisor for specific recommendations or advice regarding this information.

April 6, 2020

Many of you have received a letter (**Letter 6336**) from the IRS in the past few days regarding certain micro-captive arrangements. This letter appears to have been mailed out to everyone who either filed Form 8886 or was noted as a participant in the transaction regardless of what was disclosed on the actual filing or if the Form was filed on a protective basis.

You will recall that back in 2016, the IRS issued Notice 2016-66 which described an abusive transaction that involved the use of IRC Section 831(b) and related party risk. The automotive F&I reinsurance providers across the country attempted to show the IRS how Notice 2016-66 should not apply to the typical automotive F&I reinsurance structure, and while the IRS acknowledged privately how the abusive structure described in Notice 2016-66 was different from automotive F&I reinsurance structures, the IRS could not determine a pathway to systematically exclude these legitimate arrangements from the overall “transaction of interest” reporting requirements. Therefore, out of an abundance of caution and to avoid the risk of penalties, the industry decided to recommend filing protective Forms 8886 in certain situations.

We believe that the reinsurance company is the only taxpayer receiving any benefits under IRC Section 831(b) up to the point in time that all policies have lapsed inside the reinsurance company, but the Notice 2016-66 was written broadly enough that the Form 8886 filings included the dealership(s), the reinsurance company, and certain shareholders of the dealership(s) or the reinsurance company.

Our counsel maintains that the F&I reinsurance arrangement utilized by your reinsurance company is in compliance with current tax laws and that it does not exhibit the characteristics determined to be abusive by the U.S. Tax Court in several recent decisions. Thus, counsel believes that no response is required, but might be considered if your reinsurance company has been liquidated prior to the date of this letter from the IRS.

However, as Letter 6336 contains a “Penalties of perjury statement”, you should consult with your independent tax advisor(s) about signing the statement as this communication is informational only and does not constitute tax advice. Here are items that will be of interest to your tax advisor:

1. A reinsurance arrangement involving dealerships that currently cede unrelated F&I risk premiums into a reinsurance company is an arrangement that utilizes the benefits of IRC Section 831(b) by the reinsurance company.

2. A reinsurance company continues to utilize the benefits of IRC Section 831(b) until such time as all of the policies inside the reinsurance company are no longer in force either due to their lapsing due to time or they were cancelled by the insured.
3. As the recipient of this letter from the IRS, if you are either a dealership or a dealership shareholder or a reinsurance company shareholder, please remember to consider all of your reinsurance arrangements as you make the decision whether to sign and return the "Penalties of perjury statement" contained in the communication.

If you are selected for examination as a part of this increased enforcement effort by the IRS, please contact us immediately so that we can track the examination and any efforts to attack the structure that is in place. By doing this and keeping us informed, we will be best able to assist you and your tax advisor(s) during the examination process.

Thank you,



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