



## **2026 Annual Conference**

# **The TAX of it all**

***captive programs, tax planning and audit defense***

# With you today



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# Disclaimer



*Please note that this presentation is for informational purposes only and does not constitute tax, legal, accounting, or other professional advice. It is not intended to be relied upon by any person for tax reporting, planning, or compliance purposes. Terms such as “will,” “should,” “may,” “must,” and similar expressions are used as terms of art and technical conventions and do not indicate a level of assurance or advice on which reliance may be placed. Readers and presentation session participants should consult their own advisors regarding their specific facts and circumstances.*

# Agenda



- From structuring to policy issuance – what you need to know
- Captive Insurance – Tax POV
- Captive maintenance –tax compliance and tax financial reporting
- Documentation and tax controversy – key points
  - IRS and Court views
- Questions?



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**From structuring to policy issuance**

# Captives as Defined By Jurisdictional Insurance Law

From structuring to policy issuance



- A captive is an entity formed to assume risks of its parent, parent's affiliates, or a controlled group with a contractual nexus with such parent or parent's affiliates. In some cases, it can include JV partners, customers, suppliers, etc.
- It must be licensed by the jurisdictional department of insurance (DOI) where formed, and requires compliance with specific insurance laws, financial standards, and solvency requirements.
- Less regulation than traditional insurers because majority of risks are still affiliated vs. third-party

# Defining the perimeter

## From structuring to policy issuance



- Your org chart
  - Deeper dive into “where” question. Consideration given to future distribution of earnings, restructuring, spin offs, etc.
    - Corporate vs. PE vs. Private Wealth structures
  - For portfolio groups – consider portfolio optimization and future plans for individual portfolios or PortCos
- What to insure and scope of coverage
  - Higher retention, elimination of commercial policy(ies), difference in coverage or conditions, previously uninsured, customer facing, etc.
  - Where do you draw the line?

# Policies issued

## From structuring to policy issuance



- Policy structure
  - Accepted as insurance by DOI? Tax implications of DOI acceptance or non-acceptance of proposed policy as insurance
  - Regulatory terms vs. Tax terms – are those the same?
- Policy language
  - Hidden pitfalls for tax purposes
- Parametric risks



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# **Captive Insurance – Tax POV**

# Failing to plan is planning to fail....

## Captive Insurance – Tax POV



- Where do you start?
  - In general: Organizational structure and the impact on tax qualification
  - New captives
    - The business of insurance
    - 4 Prongs of Insurance Test
      - Insurable risk
      - Risk shifting
      - Risk Distribution
      - Common notions of insurance
  - Existing captives
    - Consider impact of new programs / re-evaluate the tests

# Failing to plan is planning to fail....

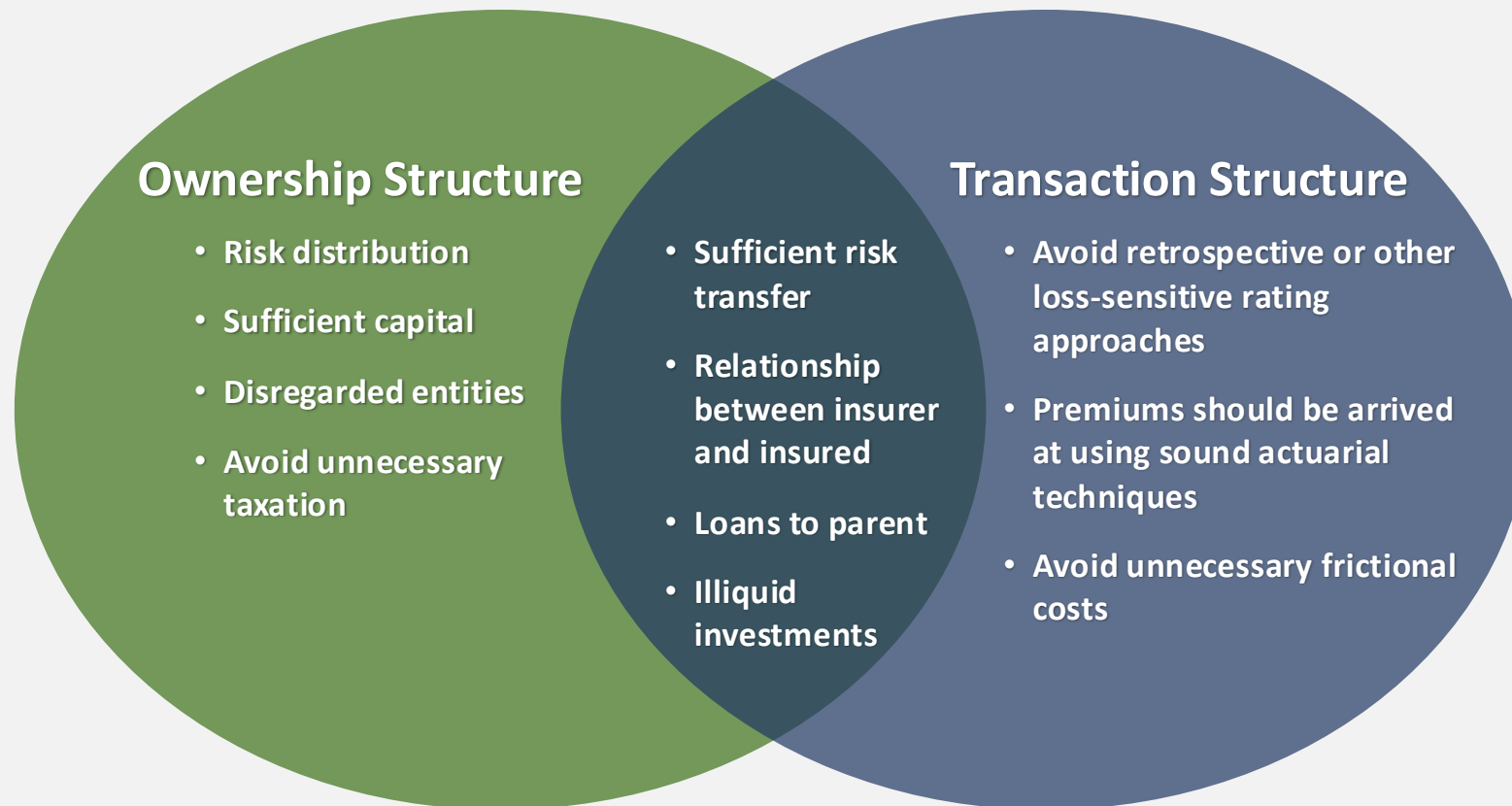
## Captive Insurance – Tax POV



- Stakeholders
  - Why have a captive?
  - Where does the conversation begin?
  - Who do I invite to the table?
  - The impact on the overall organization
  - Customers, JV partners, Suppliers, etc.

# What do you need to pay attention to in seeking insurance treatment for your captive?

## Captive Insurance – Tax POV



# Failing to plan is planning to fail....

## Captive Insurance – Tax POV



- State considerations
  - Domicile selection
    - Key points to know
    - Coordination with organization's overall state structure and tax profile
    - Location of risk and concentration of risk
  - Taxation
    - Which taxes may apply and why? (e.g. Income Tax, Self-Procurement Tax, etc.)
    - Does tax profile of a captive change if you qualify or do not qualify as insurance for federal tax purposes?
    - Does potential tax liability for the group change?

# Failing to plan is planning to fail....

## Captive Insurance – Tax POV



- Other considerations
  - “Failed” captives
    - Is “how you fail” important and why?
    - Federal and state tax implications
  - Not-For-Profit structures
    - Planning to fail as a route to success! Or is it?

# Failing to plan is planning to fail....

## Captive Insurance – Tax POV



- Consultants and Regulators
  - Who do I involve and when
  - Should I have a PMO person or lead consultant?
  - Getting the right team in place – what should I think about when I interview/hire consultants to help with the captive set up/enhancement?
  - When do I approach the regulator and what do I need at the initial stages?

# The winning line up – who is in your corner?

## Captive Insurance – Tax POV



| Issue                             | Broker/RM consult. | Actuary | Tax consultant |
|-----------------------------------|--------------------|---------|----------------|
| Risk Distribution                 |                    | ✓       | ✓              |
| Sufficient capital                | ✓                  | ✓       | ✓              |
| Disregarded entities              |                    |         | ✓              |
| Avoiding unnecessary taxation     | ✓                  |         | ✓              |
| Sufficient risk transfer          | ✓                  | ✓       | ✓              |
| Loans to parent/affiliates        | ✓                  | ✓       | ✓              |
| Illiquid investments              |                    | ✓       | ✓              |
| Premium rating structure/approach | ✓                  | ✓       | ✓              |
| Avoiding frictional costs         | ✓                  |         | ✓              |



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# **Maintenance – Tax Compliance and Financial Reporting**

# The daily grind...

## Maintenance – Tax Compliance and Financial Reporting



- Tax financial reporting
  - Qualifying vs. non-qualifying captives
  - Current and deferred tax considerations
  - Consolidated vs. stand-alone calculation
- Tax compliance
  - Federal, State, International
  - What do you need to pay attention to?



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## **Documentation and controversy**

# Recordkeeping...

## Documentation and controversy



- Structure and tax position
  - How do I document my position and what do I need?
  - Should I get a tax opinion?
  - Should documentation be contemporaneous?
    - What if my captive structure/program does not change over the years?
  - Do I need a “the bus factor” captive structure manual?
- Refresh
  - How often should I review my structure?

# Controversy...

## Documentation and controversy



- Who can audit my captive?
  - IRS, State DOI or DOR, foreign government entity?
  - What may be the scope of such audit?
- What are the steps I should take to prepare for audit, who should I hire (if anyone) to assist?

# The Good...The Bad...The Ugly

## IRS and Court views



- Key cases to consider in planning
- Impact of Sec 831(b) legislation and court cases on non-Sec 831(b) market
- Is there still divergence between IRS and Court views?
- Selecting your primary authority – questions you need to ask

# Questions?



## Thank You!

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# Appendix

# Captive Qualification for Tax

## Appendix



While a Captive may be considered an insurance company for regulatory purposes, a separate analysis must be performed to determine whether the captive qualifies as an insurance company for tax purposes.

- More than Half the Business (general insurance company qualifier)
- Existence of Insurance/Insurable Risk
- Risk Shifting
- Risk Distribution
- Operating the arrangement under “Commonly Accepted Notions of Insurance”

# Captive Qualification for Tax

## Appendix



- **More than Half the Business**
  - An “insurance company” is a company where more than half the business of which is in the issuing of insurance or annuity contracts, or the reinsuring of risks underwritten by insurance companies. IRC Sections 831(c) and 816(a).
- **Existence of Insurance/Insurable Risk**
  - There must be a transfer of economic penalties of financial loss away from the insured to the insurer and the risks transferred from the insured must involve fortuity and constitute more than mere “business” or “investment” risk. ASC 944-20-15 and FAS113.
- **Risk Shifting**
  - The insurer must be a separate, viable entity financially capable of meeting its obligations and have the same relationship with its affiliates as with unrelated insured parties.
- **Risk Distribution**
  - There must be pooling of funds by the insurer to spread the economic consequences of claims over a diverse group that is large enough to yield a predictable loss.
- **Commonly Accepted Notions of Insurance**
  - Under the commonly accepted notions of insurance, an entity must be adequately capitalized, issue valid and binding insurance contracts at arm’s length with actuarially determined premiums, and operate in a manner consistent with a commercial insurer by assuming risk, collecting premiums, and paying claims.

# Self-Procurement Tax

## Appendix



| Direct Procurement Tax Range | States                                                     |
|------------------------------|------------------------------------------------------------|
| No Law                       | DC, GU, IN, MA, SC, VA, WA, WV                             |
| 0.50% to 2.50%               | AR, ID, IL, IA, KY, MI, MN, ND, OR, SD                     |
| 2.51% to 3.50%               | AZ, CA, CO, DE, ME, MD, MS, MT, NE, NV, NM, PA, VT, WI, WY |
| 3.51% to 4.50%               | AL, AK, CT, GA, NH, NY, RI, UT                             |
| 4.51% to 5.50%               | FL, HI, LA, MO, NC, NJ, OH, TN, TX, USVI                   |
| Over 5.50%                   | KS, OK, PR                                                 |

\*Subject to change based on evolving state legislation

# Non-admitted and Reinsurance Reform Act

## Appendix



The Non-Admitted and Reinsurance Reform Act (NRRA) was enacted as part of Dodd-Frank to create uniformity and reduce duplicative state regulation over nonadmitted insurance and reinsurance transactions

- Most relevant elements
- “No state other than the home state of an insured may require any premium tax payment for non-admitted insurance.”
- “Premium tax” includes tax on independently procured insurance
- States may enter into compact to allocate premium tax paid to home state
- Most states have amended laws to conform to NRRA and many have instructed insureds who self-procure to remit 100% of tax to home state
- No states have entered into an interstate compact to allocate premium taxes

# NRRA “Home State”

## Appendix



- In general
  - State in which an insured maintains principal place of business or, in the case of an individual, the individual's principal residence; or
  - If 100% of the insured risk is located outside of State references to above, the State to which the greatest percentage of the insured's taxable premium for the insurance policy is allocated
- Affiliated group
  - If more than one insured from an affiliated group are named insureds on a single insurance policy, home state for policy is home state of affiliate with the largest percentage of premiums attributed to it under the policy



## 2026 Annual Conference

# Glossary of Terms

# Glossary of Terms

## Glossary (1 of 8)



- **4 Prongs of Insurance (Tax Qualification Tests)**

- The criteria the IRS and courts use to decide whether an arrangement is “insurance” for federal tax purposes: more than half the business is insurance, existence of insurable risk, risk shifting, risk distribution, and operating under commonly accepted notions of insurance.

- **Actuarial Pro Forma**

- A forward-looking financial projection, prepared by an actuary, showing expected premiums, losses, and capital adequacy for a proposed captive; typically required by the DOI during licensing.

- **Arm’s-Length (Pricing/Premium)**

- Pricing set as if the transacting parties were unrelated, independent parties negotiating in their own self-interest – the standard applied to related-party insurance premiums.

- **ASC 944-20-15 / FAS 113**

- U.S. accounting standards that define the criteria for an arrangement to be accounted for as insurance or reinsurance, including required risk transfer.

- **Association Captive**

- A captive owned collectively by members of a common industry or trade association, insuring the risks of its members.

# Glossary of Terms

## Glossary (2 of 8)



- **“The Bus Factor”**
  - An informal risk-management term for how much institutional knowledge would be lost – and how badly operations would be disrupted – if a key person were suddenly unavailable; used to argue for a written captive structure manual.
- **Captive (Captive Insurance Company)**
  - An insurance company formed to insure the risks of its own parent company, affiliates, or a related group, rather than risks of unrelated third parties.
- **Contemporaneous Documentation**
  - Records and analysis prepared at, or close to, the time a transaction or decision occurs, rather than reconstructed later; generally given more weight in an IRS or regulatory review.
- **Direct Procurement Tax**
  - Used in this deck interchangeably with self-procurement tax or non-admitted insurance tax; a tax on premiums for insurance procured directly from a non-admitted (unlicensed in that state) insurer.
- **Disregarded Entity**
  - A business entity (commonly a single-member LLC) not treated as separate from its owner for federal tax purposes, even though legally separate; relevant if a captive is structured this way.

# Glossary of Terms

## Glossary (3 of 8)



- **DOI (Department of Insurance)**
  - The state or jurisdictional regulatory agency responsible for licensing and supervising insurance companies, including captives.
- **Domicile**
  - The jurisdiction – state or offshore location – where a captive is legally formed and licensed, and whose insurance laws govern it.
- **DOR (Department of Revenue)**
  - The state tax authority responsible for administering and collecting state taxes, including premium and self-procurement taxes.
- **Fortuity**
  - The requirement that an insured risk be accidental or uncertain in timing and occurrence, rather than a predictable business or investment outcome – a core element of an insurable risk.
- **Frictional Costs**
  - Additional, non-risk-related costs – such as unnecessary layers of transaction or administrative expense – that can undermine the economic substance of a captive arrangement.

# Glossary of Terms

## Glossary (4 of 8)



- **Fronting**

- An arrangement where a licensed, admitted insurer issues a policy on behalf of a captive, which then reinsures some or all of the underlying risk.

- **Home State (under NRRA)**

- The state entitled to collect premium tax on non-admitted insurance – generally the insured’s principal place of business, with specific rules for affiliated groups.

- **Illiquid Investments**

- Captive-held assets that cannot easily be converted to cash; captives are generally expected to maintain accessible, liquid assets to pay claims.

- **Independently Procured Insurance**

- Insurance purchased directly by an insured from a non-admitted insurer, without going through a licensed surplus lines broker.

- **Industrial Insured Captive**

- A captive that insures a sophisticated commercial policyholder (an “industrial insured”) meeting certain size or qualification thresholds under insurance law.

# Glossary of Terms

## Glossary (5 of 8)



- **IRC §831(c) / §816(a)**
  - Provisions of the U.S. Internal Revenue Code defining what constitutes an “insurance company” for federal tax purposes.
- **JV (Joint Venture) Partner**
  - A separate company that co-owns a business venture with another company; a captive’s risk pool can sometimes extend to a JV partner’s risks.
- **Loans to Parent (Upstream Loans)**
  - Loans made by the captive back to its parent company or affiliates; can raise regulatory and tax concerns if they effectively return capital needed to pay claims.
- **Loss-Sensitive / Retrospective Rating**
  - A premium pricing approach where the final premium is adjusted after the fact based on actual claims experience; generally disfavored for captives seeking tax-qualifying treatment.
- **Non-Admitted Insurance**
  - Insurance coverage placed with an insurer that is not licensed (“admitted”) in the state where the risk is located.

# Glossary of Terms

## Glossary (6 of 8)



- **NRRA (Non-Admitted and Reinsurance Reform Act)**

- A federal law, enacted as part of Dodd-Frank, that simplifies state regulation of non-admitted insurance and reinsurance by generally giving only the insured's home state authority to require premium tax.

- **Parametric Risk / Parametric Insurance**

- Coverage that pays out based on a predefined triggering event or index (e.g., a hurricane reaching a certain wind speed), rather than an assessment of actual incurred loss.

- **PMO (Project Management Office/Person)**

- A dedicated role or function responsible for coordinating and overseeing a project – here, the captive formation or enhancement effort – across multiple advisors and workstreams.

- **PortCo**

- Shorthand for “portfolio company” – a company owned by a private equity fund or investment portfolio.

- **Premium Tax**

- A state tax imposed on insurance premiums; under the NRRA, generally only the insured's home state may collect it for non-admitted coverage.

# Glossary of Terms

## Glossary (7 of 8)



- **Pure Captive**

- A captive that insures only the risks of its own parent company and affiliates – no unrelated third-party business.

- **Qualifying vs. Non-Qualifying Captive**

- A “qualifying” captive meets the tests to be treated as an insurance company for tax purposes; a “non-qualifying” captive fails one or more tests and is typically taxed differently.

- **Risk Distribution**

- The spreading of risk of loss across a large and sufficiently diverse pool of insureds or exposures so that losses become statistically predictable.

- **Risk Shifting (Risk Transfer)**

- The transfer of the economic burden of a potential loss from the insured to the insurer, such that the insurer bears the financial consequence of a covered loss.

- **Self-Procurement Tax (see also Direct Procurement Tax)**

- A state tax owed by an insured that purchases insurance directly from an insurer not licensed in that state, calculated on the premium paid.

# Glossary of Terms

## Glossary (8 of 8)



- **Series Captive**
  - Similar to a cell captive; a captive structure divided into legally distinct “series,” each with its own assets and liabilities, under one license.
- **Solvency Requirements**
  - Minimum capital, surplus, and financial-strength standards a captive must maintain to remain licensed and able to pay claims.
- **Special Purpose Captive**
  - A captive licensed for a narrow, defined purpose – such as a single line of risk or a single transaction – rather than general multi-line coverage.
- **Sponsored Captive / Cell Captive**
  - A structure in which a sponsor establishes separate, legally segregated “cells,” each owned or used by a different participant, sharing the sponsor’s licensed facility.
- **Tax Opinion**
  - A formal written analysis from a tax advisor or law firm assessing the likely tax treatment of a transaction or structure, often used to support a filed tax position.