

No. 19-930

In the **Supreme Court of the United States**

CIC SERVICES, LLC,
Petitioner,

v.

INTERNAL REVENUE SERVICE, ET AL.,
Respondents.

**On Petition for Writ of Certiorari to the United
States Court of Appeals for the Sixth Circuit**

**BRIEF OF THE KENTUCKY CAPTIVE
ASSOCIATION, INC., MISSOURI CAPTIVE
INSURANCE ASSOCIATION, NORTH CAROLINA
CAPTIVE INSURANCE ASSOCIATION, OKLAHOMA
CAPTIVE INSURANCE ASSOCIATION, AND
TENNESSEE CAPTIVE INSURANCE
ASSOCIATION, INC., AS *AMICI CURIAE* IN
SUPPORT OF PETITIONER**

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February 24, 2020

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The Kentucky Captive Association, Inc., Missouri Captive Insurance Association, North Carolina Captive Insurance Association, Oklahoma Captive Insurance Association, and Tennessee Captive Insurance Association, Inc., submit this brief as amici curiae in support of petitioner CIC Services, LLC.¹

STATEMENT OF THE INTEREST

The aforementioned State organizations (the “Amici”) are unaffiliated trade organizations representing the interests of their respective members mainly within a single given State. The membership of the State organizations primarily includes captive insurance companies and their owners, captive insurance managers, attorneys, actuaries, investment managers, certified public accountants, and others. Each of these captive insurance associations promotes the compliant and solvent operation of captive insurance companies through professional education, networking events, and engagement in legislative and regulatory affairs. A majority of the members of the boards of directors or executive committees of the boards of directors of each of these associations voted to approve the filing of this brief.

¹ Pursuant to Rule 37.6, counsel for amici curiae states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae, their members, or their counsel made a monetary contribution to its preparation or submission. Counsel for the Amici provided timely notice of the Amici’s intent to file this brief, and all parties have consented to its filing.

Nearly 1,000 captive insurance companies and related cells are domiciled in and regulated by the States of Kentucky, Missouri, North Carolina, Oklahoma and Tennessee. Moreover, many of these 1,000 captive insurance companies are group captive insurance companies or protected cell captive insurance companies, each of which houses the captive insurance programs of a number of unrelated businesses. There are well over 1,000 unique participants. Nationally, the scope of the industry is even greater. At least 30 other states have passed captive insurance enabling legislation, demonstrating a healthy and material industry in the United States.²

The Amici file this brief with a straightforward objective: to request that the Court grant certiorari to review the decision from the Sixth Circuit Court of Appeals. At a minimum, in drafting its opinion, Amici ask the Court to consider what the Internal Revenue Service (“IRS”) did not, namely the detrimental impact of Internal Revenue Service Notice 2016-66 (Notice 2016-66) on the captive insurance industry. The Uniform Administrative Procedures Act requires an agency to allow for a meaningful opportunity to comment on the proposed rule through the submission of written data, views, or arguments. *See* 5 U.S.C. § 553(c). Further, this Court has held that an agency is obligated to respond to significant comments. *See Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 135 S. Ct. 1199, 1203 (2015). However, the IRS did not allow for a meaningful opportunity to comment on Notice 2016-66

²<https://www.iii.org/publications/a-firm-foundation-how-insurance-supports-the-economy/a-50-state-commitment/captives-by-state>

or respond to any significant comments or concerns. Consequently, the *Amici* request the Court to consider the following:

- (1) Notice 2016-66 imposes a heavy burden on the public with little or no additional benefit to the Internal Revenue Service (“IRS”);
- (2) Notice 2016-66 causes ongoing irreparable harm to the captive insurance industry and its stakeholders;
- (3) Notice 2016-66 violates the Taxpayer Bill of Rights;
- (4) Notice 2016-66 invalidates, impairs, and supersedes laws enacted by States for the purpose of regulating the business of insurance, or which impose a fee or tax upon such business; and
- (5) Information gathering is a phase of tax administration procedure that occurs before the assessment of a tax, and the Anti-Injunction Act should not apply.

Further, because the IRS seemingly did not consider any comments when issuing Notice 2016-66, *Amici* believe that Notice 2016-66 should be declared invalid because the IRS fails to follow the “notice and comment” protocols of the uniform Administrative Procedure Act (“APA”). The *Amici* offer no opinion on any other particular facts or structure of any insurance program at issue or otherwise.

BACKGROUND ON INSURANCE REGULATION

Insurance Regulation.

State-based insurance regulation has a more than 100-year history of success in the United States. Congress, in passing the McCarran-Ferguson Act of 1945, exclusively reserved to the States the power to regulate insurance. The States, the District of Columbia, and several territories each participate in this national system of state-based regulation.

The McCarran-Ferguson Act states that “No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance...” 15 U.S.C. § 1012. Since its passage, Congress has concluded that “the business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.” 15 U.S.C. § 1012. As a result, every State has comprehensive insurance regulation and oversight capabilities.

At least 35 United States jurisdictions, including states, territories, and the District of Columbia permit licensing and regulation of captive insurers. In each of these domiciles, the applicable regulator has the authority to grant an insurance license to a company, after regulatory review and subject to ongoing oversight. Many States have dedicated staff that exclusively service and regulate captive insurance.

Robust Regulatory Standards.

All domestic domiciles that regulate captive insurance require each applicant for a license to complete background checks, maintain certain capital levels, and provide financial information on demand. The vast majority also require annual review by independent actuaries, as well as annual audits by independent CPAs and/or examinations by the regulator, among other requirements.

The standards and requirements that domestic regulators impose on insurance companies, and on captive insurance companies in particular, are intended to protect policyholders by ensuring solvency. The standards and requirements are remarkably consistent, similar across the country, and can address all aspects of insurance company operation, including the subject of the insurance, the characteristics of the insurance policies, and the structure of reinsurance arrangements. By refusing, grant a meaningful opportunity to comment on Notice 2016-66, the IRS has essentially disregarded the insurance industry's robust regulatory standards.

SUMMARY OF ARGUMENT

The APA requires an agency to allow for a meaningful opportunity to comment on the proposed rule through the submission of written data, views, or arguments. *See* 5 U.S.C. § 553(c). Further, this Court has held that an agency is obligated to respond to significant comments. *See Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 135 S. Ct. 1199, 1203 (2015). However, the Issuance of Notice 2016-66 by the IRS did

not comply with the APA or other congressionally mandated requirements, such as the Congressional Review Act, the Regulatory Flexibility Act, and the Paperwork Reduction Act. Such a result is particularly concerning to the Amici, as this Court has made clear that tax rules are subject to the same types of review as other administrative regulations. *See, e.g., Mayo Found. for Med. Educ. & Research v. United States*, 562 U.S. 44 (2011).

Had the IRS followed the APA, the concerns of the Amici regarding the impact of Notice 2016-66 would have been addressed. Since the IRS failed to follow the APA, the Amici ask this Court to consider the written data, views and arguments of the Amici that Notice 2016-66: 1) imposes a heavy burden on the public and provided little or no additional benefit to the IRS, 2) causes ongoing harm to the captive insurance industry, 3) violates the Taxpayer Bill of Rights, and 4) preempts laws enacted by States for the purpose of regulating the business of insurance.

Finally, although the Anti-Injunction Act prohibits suits “for the purpose of restraining the assessment or collection of any tax,” 26 U.S.C. § 7421(a), this Court recently explained that the terms “assessment” and “collection” do not extend to mere reporting requirements. *Direct Mktg. Ass’n v. Brohl*, 575 U.S. 1, 8 (2015). The Amici seek clarification from this Court that the Anti-Injunction Act does not prevent pre-enforcement challenges to tax rules not involving the assessment or collection of taxes.

ARGUMENT

I. Notice 2016-66 imposes a heavy burden on the public with little or no additional benefit to the IRS.

The IRS claims that Notice 2016-66 is necessary to identify which Internal Revenue Code Section 831(b) (“Section 831(b)”) arrangements should be identified specifically as a tax avoidance transaction. In reality, however, Notice 2016-66 appears to be designed to burden the industry and thereby diminish its size and scope. Notice 2016-66 requires essentially all captive insurers making the Section 831(b) election, their owners, the insured operating entity(ies) and its owners, and any reinsurer, to submit IRS Form 8886, Reportable Transaction Disclosure Statement. In addition, so-called “material advisors,” like the Petitioner, must file Form 8918, Material Advisor Disclosure Statement. Although blank copies of Form 8886 are a mere two pages in length, the completed form can be extremely long and complicated. In fact, by the IRS’ own estimate, Form 8886 takes more than twenty-one hours, *i.e.*, over half of a standard workweek, to complete. *See* Internal Revenue Service, *Instructions for Form 8886*, at 7, available at <https://www.irs.gov/pub/irs-pdf/i8886.pdf>. For some businesses, including many of the Amici state organization’s members, this presents a very heavy new paperwork expansion. If each of the estimated 1,000 captive insurance company members of the Amici spent 21.5 hours preparing Form 8886, they would collectively spend over 43,000 hours per year complying with Notice 2016-66. That total does not include the

Form 8918 to be prepared and submitted by advisors, such as captive managers, CPAs and lawyers, on whom the burden is potentially prohibitive. At the IRS' estimated rate, an advisor who provides material advice to only 52 captive insurance companies would spend approximately *six months* each year preparing the paperwork associated with Notice 2016-66. For example, SIIA surveyed approximately 2,300 of its members and found that they had filed over 15,000 forms at a collective cost of \$22,186,800, to comply with Notice 2016-66. *See Once Again SIIA Stands Up For Small Captives And Small Business, available at <https://www.captivatingthinking.com/once-again-siia-stands-up-for-small-captives-and-small-business/>.*

In contrast with this onerous burden, the actual benefits of Notice 2016-66 to the IRS are likely to be minimal. First, the IRS does not appear to have either the staff or the resources necessary to read the mountains of paperwork created by Notice 2016-66, let alone analyze the information on these forms or translate it into concrete guidelines about whether a transaction is a prohibited or abusive tax shelter. *See Dave Du Val, Beware the I.R.S.'s Speeded-Up Audit, NY Times (Apr. 29, 2015), available at <https://www.nytimes.com/2015/04/30/opinion/beware-the-irss-speeded-up-audit.html>.* Second, the Amici and the captive industry are aware of an extensive series of audits that the IRS is conducting and has conducted over the last several years. There are more than 500 docketed captive insurance cases in Tax Court involving Section 831(b). *See Internal Revenue Service, Abusive tax shelters, trusts, conservation easements make IRS' 2019 "Dirty Dozen" list of tax scams to avoid (March.*

19, 2019), *available at* <https://www.irs.gov/newsroom/abusive-tax-shelters-trusts-conservation-easements-make-irs-2019-dirty-dozen-list-of-tax-scams-to-avoid>. It is also estimated that there are or soon will be several thousand captive insurance arrangements under audit by the IRS. *See IRS update on “micro-captive insurance transactions”, available at* <https://home.kpmg/us/en/home/insights/2020/01/tnf-irs-update-on-micro-captive-insurance-transactions.html>. Further, at the end of 2018, it was estimated that there were approximately 3,123 active captive insurance companies and 1,865 active cells formed in key U.S. jurisdictions, and approximately 6,647 active captive insurance companies and active 3,223 cells formed in key jurisdictions worldwide. *See SRS Charts the Total Number of Active Captives for 2018, available at* <https://www.captive.com/news/2019/02/25/srs-charts-the-total-number-of-active-captives-for-2018>. This means that there are approximately 5,000 active captive risk bearing entities (captive insurance companies plus cells) formed in key U.S. jurisdictions, and approximately 10,000 active risk bearing entities, not all of which make the Section 831(b) election, formed in key jurisdictions worldwide as of 2018, the most recent year for which data is currently available. *See Id.* Assuming, on the low end, that the several thousand captive insurance companies currently or soon to be under audit is approximately 2,000, the IRS is auditing an estimated number of captive insurance arrangements equivalent to 40% of the active captive risk bearing entities formed in key U.S. domiciles, or 20% of the active captive risk bearing entities formed in key worldwide jurisdictions.

Additionally, on January 31, 2020, the IRS Commissioner stated that the IRS will “vigorously pursue those involved in these and other similar abusive transactions going forward. . . Enforcement activity in this area is being significantly increased. To that end, the IRS is deploying additional resources, which includes setting up 12 new examination teams . . . that will be working to address these abusive transactions and open additional exams.” *See* IRS takes next step on abusive micro-captive transactions; nearly 80 percent accept settlement, 12 new audit teams established, *available at* <https://www.irs.gov/newsroom/irs-takes-next-step-on-abusive-micro-captive-transactions-nearly-80-percent-accept-settlement-12-new-audit-teams-established>.

These audits produce information on Section 831(b) insurers at a painstaking level of detail. *See* Appendix (redacted copy of an IRS Information Document Request form). The level of information required in these audit request forms produces a far more detailed and intricate level of information than must be provided on the Form 8886. These audits ultimately led to three decisions in the United States Tax Court that decided against the taxpayer.³ Simply put, if the IRS has not learned sufficient information to identify an abusive transaction from its widespread audits of a large percentage of the active captive insurance companies and cells formed worldwide and Tax Court

³ *See Avrahami v. Commissioner*, 149 T.C. 7 (T.C. Aug. 21, 2017), *Reserve Mechanical Corp. v. Commissioner*, T.C. Memo. 2018-86 (T.C. June 18, 2018), and *Syzygy Insurance Co., Inc., et. al. v. Commissioner*, T.C. Memo. 2019-34 (April 10, 2019).

litigation, Notice 2016-66 will not make any material difference in its regulatory efforts.

In light of the extreme burden on the public and the minimal benefit to the IRS, the Amici believe that the actual purpose of Notice 2016-66 is not information gathering, but rather to deter taxpayers from participating in a lawful and beneficial industry. To further bolster this argument, the Amici would point to the timing of the Notice 2016-66 release. On December 18, 2015, the Protecting Americans from Tax Hikes Act (the “PATH Act”) was enacted.⁴ The Path Act included revisions to Section 831(b) to prohibit the use of captive insurance companies as estate planning tools by adding certain ownership diversification requirements. The Path Act also included revisions to Section 831(b) to increase the premium threshold to qualify for the Section 831(b) deduction from \$1,200,000 to \$2,200,000, with annual inflation adjustments. These new provisions went into effect for tax years beginning after December 31, 2016. In the wake of this expansion of the Section 831(b) premium threshold, the IRS response was to issue Notice 2016-66 on November 1, 2016, in an attempt to discourage captive insurance companies from taking advantage of the then soon to be effective newly congressionally authorized expanded deduction.

⁴ Joint Committee on Taxation, *Technical Explanation of the Revenue Provisions of the Protecting Americans from Tax Hikes Act of 2015, House Amendment #2 to the Senate Amendment to H.R. 2029 (Rules Committee Print 114-40), (JCX-144-15)*, December 17, 2015 (hereinafter, “PATH Act”).

Because the IRS did not allow a meaningful opportunity to comment on Notice 2016-66 about how the Notice produces far less information than an audit, while discouraging captive insurance companies from utilizing a valid tax deduction, the Amici respectfully urge this Court to prevent the IRS from engaging in this inequitable use of its regulatory powers by declaring Notice 2016-66 invalid.

II. Notice 2016-66 causes ongoing irreparable harm to the captive insurance industry and its stakeholders.

Since taking effect, IRS Notice 2016-66 has inflicted immediate and irreparable harm on the captive insurance industry. Apart from the substantial burden of compliance discussed above, Notice 2016-66 threatens to stigmatize legitimate businesses and intimidate citizens from engaging in activity that Congress has expressly declared lawful, most recently in the PATH Act of 2015 and Consolidated Appropriations Act of 2018, Pub. L. 115–141. *See* Protecting Americans from Tax Hikes (“PATH”) Act of 2015, 129 Stat. 3106-08.

First, Notice 2016-66 threatens to stigmatize the Amici, their members, and those associated with the captive insurance industry, such as accountants, actuaries, attorneys and captive managers. The IRS has long cast aspersions on Section 831(b) captive insurance by including the industry on its annual “Dirty Dozen” list of supposed “tax scams.” *See* Internal Revenue Service, Abusive tax shelters, trusts, conservation easements make IRS’ 2019 “Dirty Dozen” list of tax scams to avoid (March. 19, 2019), *available*

at <https://www.irs.gov/newsroom/abusive-tax-shelters-trusts-conservation-easements-make-irs-2019-dirty-dozen-list-of-tax-scams-to-avoid>. Presumably, Congress would not have authorized Section 831(b) if it thought that all or most uses of that section amount to a tax scam.

The IRS has explained that the problem lies with “abusive” uses of Section 831(b), under which insureds pay inappropriately high premiums or receive insurance for harms that have little or no risk of materializing. *See Id.* Under Notice 2016-66, however, the IRS has declared that essentially every captive making the Section 831(b) election, including legitimate non-abusive captive insurance companies, are subject to the reporting requirement and present “the potential for tax avoidance or evasion.” *Id.* In other words, Notice 2016-66 casts a cloud of suspicion over every entity insured by a Section 831(b) captive insurance company, even when it is clear that the captive provides appropriate insurance at actuarially-justified premiums. Because Notice 2016-66 implicates legitimate captive insurance companies within its grasp, the notice continues to provide a clouded view of what the IRS would consider to be legitimate and improper structures. Because of this stigma, Notice 2016-66 has intimidated and will continue to intimidate taxpayers to forego lawful activity out of fear of reprisals from the IRS.

Collectively, the stigma and fear engendered by Notice 2016-66, along with the substantial costs of compliance, threaten to stifle the captive insurance industry in many states with captive insurance laws.

The Amici estimate that a significant percentage of the stand-alone captive insurers licensed by the states and ancillary jurisdictions qualify to file under Section 831(b). Consequently, if the IRS succeeds in its apparent goal of discouraging the use of Section 831(b), a significant percentage of the captive insurance industry would be threatened. This would not only be against the intent of the Amici and their members; it would also be against the interest of Congress, which passed Section 831(b) and reaffirmed its use in the PATH Act and the Consolidated Appropriations Act of 2018.

It appears that the IRS's actions have started to have their intended effect, as reports indicate that Notice 2016-66 has already begun to negatively affect the captive insurance market in the U.S. Many of the Amici's members report that their clients have abandoned or plan to abandon existing captive insurers and/or forego the creation of new ones since Notice 2016-66 took effect. Other members of the Amici have ceased formation of any captive insurance companies under Section 831(b) because of the heightened scrutiny and regulatory burden imposed by the Notice. The Amici are also aware of multiple audits of captive insurers or owners, each of which cost approximately \$250,000 to defend. In light of these risks and the clouded view of what the IRS would consider to be a legitimate Section 831(b) captive insurance company, many insurance professionals can no longer promote the formation of Section 831(b) captive insurance companies in good faith unless their clients are willing to embrace the substantial costs of complying with Notice 2016-66 and the risk associated with an audit.

For example, in 2018, captive insurance companies making the Section 831(b) tax election remained under the microscope, resulting in a continued reduction in their numbers and a significant drop in formation activity. *See* SRS Charts the Total Number of Active Captives for 2018, *available at* <https://www.captive.com/news/2019/02/25/srs-charts-the-total-number-of-active-captives-for-2018>.

Because the IRS did not allow a meaningful opportunity to comment on Notice 2016-66 about how the Notice stigmatizes and intimidates every captive insurance company making the Section 831(b) election, both abusive and non-abusive, the Amici respectfully urge this Court to prevent the IRS from engaging in this inequitable use of its regulatory powers by declaring Notice 2016-66 invalid.

III. Notice 2016-66 violates the Taxpayer Bill of Rights.

The Amici believe that Notice 2016-66 violates several provisions of the recently promulgated Taxpayer Bill of Rights (2014). Taxpayer Bill of Rights #1 is the Right to Be Informed and states that “taxpayers have the right to know what they need to do to comply with tax laws. They are entitled to clear explanations of the law and IRS procedures in all tax forms, instructions, publications, notices, and correspondence.” *See* Taxpayer Bill of Rights: #1, The Right to Be Informed, *available at* <https://www.irs.gov/newsroom/taxpayer-bill-of-rights-1-the-right-to-be-informed-0>. Requests have been made for guidance from the IRS regarding the amendments to the Section 831(b) under the PATH Act. *See* SIIA

calls for guidance on which PATH to take, *available at* http://www.captiveinsurancetimes.com/captiveinsurancenews/article.php?article_id=4896. No such guidance has been issued. Instead, the IRS issued Notice 2016-66 stating they did not have enough information “to define the characteristics that distinguish the tax avoidance transactions from other Section 831(b) related-party transactions.” *See* Notice 2016-66, *available at* <https://www.irs.gov/pub/irs-drop/n-16-66.pdf>. While continuing to gather this information, the IRS Commissioner vowed to “vigorously pursue those involved in these and other similar abusive transactions going forward.” *See* Internal Revenue Service, Abusive tax shelters, trusts, conservation easements make IRS’ 2019 “Dirty Dozen” list of tax scams to avoid (March. 19, 2019), *available at* <https://www.irs.gov/newsroom/abusive-tax-shelters-trusts-conservation-easements-make-irs-2019-dirty-dozen-list-of-tax-scams-to-avoid>. Additionally, as discussed above, the IRS views all captive insurance companies making the Section 831(b) election as having the “potential for tax avoidance or evasion.” *See Id.* This dichotomy of giving no guidance on how a captive insurance company may comply with Section 831(b), while subjecting every captive making the Section 831(b) election to heightened scrutiny and admitting the IRS does not have enough information, is a clear violation of the Taxpayer Bill of Rights #1. If the IRS needs more information to distinguish the tax avoidance transactions from other Section 831(b) related-party transactions, how can a taxpayer know what it needs to do to comply with tax laws in the face of an IRS onslaught.

Taxpayer Bill of Rights #4, the Right to Challenge the IRS's Position and to Be Heard, states that "taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS would consider their timely objections and documentations promptly and fairly, and to receive a response if the IRS does not agree with their position." *See Taxpayer Bill of Rights: #4, The Right to Challenge the IRS's Position and Be Heard, available at <https://www.irs.gov/newsroom/taxpayer-bill-of-rights-4-the-right-to-challenge-the-irss-position-and-be-heard-1>.* Clearly, Notice 2016-66, with its timing and intended effect of stigmatizing an industry, violates this Taxpayer Right. In fact, Taxpayer Bill of Rights #4 mimics, in many ways, the APA and further reinforces that when the IRS wants to impose a particularly severe and onerous disclosure burden, such as is associated with declaring something a transaction of interest under § 6011, that they do so in a manner that gives the taxpayers a chance to raise objections. Taxpayers have a right to have the IRS consider their timely objections and documentation properly and fairly.

Because the IRS did not allow a meaningful opportunity to comment on Notice 2016-66 about how the Notice violates the Taxpayer Bill of Rights #1 and #4, the Amici respectfully urge this Court to prevent the IRS from engaging in this inequitable use of its regulatory powers by declaring Notice 2016-66 invalid.

IV. Notice 2016-66 invalidates, impairs, and supersedes laws enacted by States for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business.

In 1945, Congress passed the McCarran-Ferguson Act, which provides that the primary responsibility for the regulation of insurance lies with the States, rather than the federal government. *See* McCarran-Ferguson Act, 59 Stat 33-34 (1945) (codified as amended at 15 U.S.C. §§ 1011-1015). Over the past seventy years, Congress has repeatedly reaffirmed that principle. *See, e.g.*, 15 U.S.C. § 1011 (“Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest.”); *id.* § 6701(b) (providing that no person may engage in the “business of insurance” unless licensed “in accordance with the relevant State insurance law”); Legal Principles Defining the Scope of the Federal Antitrust Exemption for Insurance, B-304474, March 4, 2005, *available at* <https://www.gao.gov/decisions/other/304474.htm> (“Under current federal law, the regulation of insurance is primarily the responsibility of the States. This arrangement results, in part, from Congress’s decision, in the McCarran-Ferguson Act, 15 U.S.C. 1011 et seq., to exempt certain insurance-related activities from the federal antitrust laws.”)

Further, the McCarran-Ferguson Act states that “[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless

such Act specifically relates to the business of insurance.” 15 U.S. Code § 1012(b). In *Humana, Inc. v. Forsyth*, the Court determined that “invalidate, impair, or supersede,” as used in the McCarran-Ferguson Act, means to preempt a state law. *See Humana, Inc. v. Forsyth*, 525 U.S. 229, pp. 11-23 (1999). Additionally, in *Saunders v. Farmers Ins. Exchange*, the 8th Circuit Court of Appeals held that the McCarran-Ferguson Act barred the application Fair Housing Act, 42 U.S.C. §§ 3601 et seq., and 42 U.S.C. §§ 1981 and 1982. *See Saunders v. Farmers Ins. Exchange*, 537 F.3d 961, (8th Cir. 2008). In the case, the plaintiffs alleged the defendant insurance company violated the Fair Housing Act by “charg[ing] higher premium rates for the same type of homeowners coverage to homeowners in the Community . . . than [they] charged homeowners in white communities. *See Id.* However, the court in *Saunders v. Farmers Ins. Exchange* held that “state statutes prescribing what rates may be charged are essential to the core of Missouri’s regulation of the business of insurance.” *See Id.* at 968. In its decision, the court stated that “in Missouri, the Director of Insurance has been delegated the essentially legislative task of rate-making by reviewing Insurer risk classifications and pricing differentials. If a federal court may assess damages based upon what a non-discriminatory rate would have been, and then prescribe the future rate in an injunctive decree, ‘[a] more complete overlap with the state [agency’s] pricing decisions is impossible to conceive.’” *See Id.*, citing *Dehoyos v. Allstate Corp.*, 345 F.3d 290, 302 (5th Cir. 2003) (Jones, J., dissenting).

In light of this principle and the long and successful history of state-level regulation, Notice 2016-66 represents a particularly troubling abuse of federal regulatory muscle despite effective safeguards that ensure that captive insurers operate as legitimate and beneficial insurance entities.

In the various U.S. captive jurisdictions, the insurance regulators play a very active role in regulating the captive insurance industry and preventing the types of abuses that the IRS apparently hopes to deter through Notice 2016-66. For example, in order to gain licensure in any U.S. captive jurisdiction, every captive insurer must submit an application to the jurisdiction's insurance regulator. Each jurisdiction's insurance regulator closely reviews and monitors each captive insurance company to determine whether it is properly funded, has the necessary liquidity, insures only appropriate risks, and prices its premiums correctly. At least annually, each captive insurer must submit a financial statement, an audit report prepared by an independent CPA, and an actuarial opinion certified by an independent actuary to its insurance regulator.

With Notice 2016-66, the IRS is seeking to supplant its own judgment about what constitutes an acceptable captive insurance transaction. Despite the regulation of captive insurance companies by the U.S. captive jurisdictions through numerous insurance industry experts and professionals, the IRS still believes that with regard to captive insurance companies making the Section 831(b) election that "[t]he manner in which the contracts are interpreted, administered, and applied is

inconsistent with arm's length transactions and sound business practices." See IRS Notice 2016-66. This type of broad, blanket aspersion about captive insurance companies making the Section 831(b) election completely preempts the judgment of numerous insurance industry experts and professionals in the U.S captive jurisdictions when licensing and regulating captive insurance companies in violation of the McCarran-Ferguson Act. And like in *Saunders v. Farmers Ins. Exchange*, Notice 2016-66 represents a complete overlap with the insurance regulator's regulatory decisions.

Interestingly, the IRS avoided this issue in Notice 2015-74, while recognizing the value of regulators. See Notice 2015-74, *available at* <https://www.irs.gov/pub/irs-drop/n-15-74.pdf>. In Notice 2015-74, the IRS stated that certain exotic financial arrangements designed to convert short-term capital gain and/or ordinary income into long-term capital gain through contractual manipulations ("basket contracts") were "transactions of interest." See *Id.* However, Notice 2015-74 excluded basket contracts that are "subject to regulations by a comparable regulator". See *Id.* Notice 2010-66 essentially disregards and preempts the role of the state Departments of Insurance as regulators of the captive industry, but Notice 2015-74 allows for a full pass for something that is otherwise a "transaction of interest" if it is subject to regulation.

Notice 2016-66 also has preempted U.S. captive jurisdictions' premium tax laws in violation of McCarran-Ferguson Act. As discussed above, captive insurance companies making the Section 831(b) tax

election remain under the microscope resulting in a continued reduction in their numbers and a significant drop in formation activity. See SRS Charts the Total Number of Active Captives for 2018, *available at* <https://www.captive.com/news/2019/02/25/srs-charts-the-total-number-of-active-captives-for-2018>. That drop in formation activity of captive insurance companies making the Section 831(b) election is directly attributable to Notice 2016-66. In this case, Notice 2016-66 has directly prevented U.S. captive jurisdictions from collecting premium tax from captive insurance companies seeking to make the Section 831(b) election by intimidating taxpayers from forming captive insurance companies or causing those existing captive insurance companies that had made the Section 831(b) election to shut down.

Because the IRS did not allow a meaningful opportunity to comment on Notice 2016-66 about how the Notice violates the McCarran-Ferguson Act, the Amici respectfully urge this Court to prevent the IRS from engaging in this inequitable use of its regulatory powers by declaring Notice 2016-66 invalid.

V. Information gathering is a phase of tax administration procedure that occurs before the assessment of a tax and the Anti-Injunction Act should not apply.

The Anti-Injunction Act provides that “no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.” 26 U.S.C. § 7421(a). This statute “protects the Government’s

ability to collect a consistent stream of revenue, by barring litigation to enjoin or otherwise obstruct the collection of taxes. Because of the Anti-Injunction Act, taxes can ordinarily be challenged only after they are paid, by suing for a refund.” *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 543 (2012) citing *Enochs v. Williams Packing & Nav. Co.*, 370 U.S. 1, 7–8 (1962).

The present challenge to Notice 2016-66 by the Petitioner seeks to restrain the requirement to report information to the Internal Revenue Service before a taxpayer or material advisor has failed to comply with Notice 2016-66 and become subject to any civil or criminal penalties. The District Court and the Sixth Circuit contend that the Internal Revenue Code treats the penalty for not complying with Notice 2016-66 as a tax, and that the Anti-Injunction Act therefore bars this suit. See *CIC Services, LLC v. Internal Revenue Service*, 2017 WL 5015510 (E.D. Tennessee), *CIC Services, LLC v. Internal Revenue Service*, 925 F.3d 247 (6th Cir. 2019), and *CIC Services, LLC v. IRS*, 936 F.3d 501 (6th Cir. 2019)

The Amici believe that the text of the pertinent statutes suggests otherwise. The Anti-Injunction Act applies to suits “for the purpose of restraining the assessment or collection of any tax.” § 7421(a) (emphasis added). In this case, CIC Services, LLC does not seek to enjoin the enforcement of a tax, but rather, it seeks to enjoin the IRS from information gathering pursuant to the requirements of Sections 6111 and 6112 of the Internal Revenue Code. Sections 6111 and 6112 cannot rightly be described as either a tax or a

penalty, but can be described as statutes requiring the gathering of information.

Congress can, of course, describe something as a penalty but direct that it nonetheless be treated as a tax for purposes of the Anti-Injunction Act. *See National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 544 (2012). For example, 26 U.S.C. § 6671(a) provides that “any reference in this title to ‘tax’ imposed by this title shall be deemed also to refer to the penalties and liabilities provided by” subchapter 68B of the Internal Revenue Code. *See Id.* “Penalties in subchapter 68B are thus treated as taxes under Title 26, which includes the Anti-Injunction Act”. *See Id.* at 544-545. The requirement to gather information found in Sections 6111 and 6112, however, is not in subchapter 68B of the Code. Nor does any other provision state that references to taxes in Title 26 shall also be deemed to apply to the requirement to gather information pursuant to §§ 6111 and 6112. As the Supreme Court explained in *Direct Marketing, “information gathering”* (such as the requirement to provide information pursuant to Notice 2016-66) is “a phase of tax administration procedure that occurs before assessment... or collection”. *See Direct Mktg. Ass’n v. Brohl*, 575 U.S. 1, 135 S. Ct. 1124, 1129-31 (2015).

The Amici urge the Court to grant certiorari in this case and to allow the case to move forward on the basis Judge Nalbandian stated in his dissent in *CIC Services, LLC v. Internal Revenue Service*, 925 F.3d 247 (6th Cir. 2019). “[A] suit to enjoin the enforcement of a reporting requirement is not a ‘suit for the purpose of restraining

the assessment or collection of any tax,’ 26 U.S.C. §7421(a), . . . because the tax does not result from the reporting requirement per se”. *CIC Services, LLC v. Internal Revenue Service*, 925 F.3d 247, 259-261 (6th Cir. 2019)(Nalbandian, J., dissenting). “The only way for the IRS to assess and collect the tax is for a party to violate the [reporting] requirement. So enjoining the [reporting] requirement only stops the assessment and collection of the tax in the sense that a party cannot first violate the [reporting] requirement and then become liable for the tax.” *See Id.* at 261. To add to this point, the Amici are unaware of any captive insurance company or material advisor being penalized for failing to comply with Notice 2016-66. As such, there are currently no known penalties owing to the IRS that could be enjoined.

CONCLUSION

For the foregoing reasons, the Amici urge the Court to review closely the validity of Notice 2016-66. The Amici filing this brief, while offering no opinion on any other particular facts or structure of any insurance program at issue or otherwise, believe the Court should grant certiorari in this case because the IRS did not allow a meaningful opportunity to comment on Notice 2016-66 and failed to respond in any way to the following significant industry concerns:

- (1) Notice 2016-66 imposes a heavy burden on the public with little or no additional benefit to the Internal Revenue Service (“IRS”);

(2) Notice 2016-66 causes ongoing irreparable harm to the captive insurance industry and its stakeholders;

(3) Notice 2016-66 violates the Taxpayer Bill of Rights;

(4) Notice 2016-66 invalidates, impairs, and supersedes laws enacted by states for the purpose of regulating the business of insurance, or which impose a fee or tax upon such business; and

(5) Information gathering is phase of tax administration procedure that occurs before the assessment of a tax, and the Anti-Injunction Act should not apply.

Respectfully submitted,

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Dated: February 24, 2020

APPENDIX

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Appendix Audit Document Request App. 1

APPENDIX

Form 4564 (Rev. September 2006)	Department of the Treasury – Internal Revenue Service Information Document Request	Request Number 4-0004
To: (Name of Taxpayer and Company Division or Branch) [REDACTED]	Subject 2012 Pick Up & Add'l Info	SAIN number . Submitted to: [REDACTED]
Please return Part 2 with listed documents to requester identified below	Dates of Previous Requests (mmddyyyy)	

Description of documents requested

Tax Period(s): 201112

Please be advised that the 2012 tax return has been picked up for exam

Provide the following documentation for tax years 2011 and 2012.

Part I – Instructions and Definitions

Instructions

In responding to this Information Document Request (“IDR”), all requests for documents should be construed expansively rather than narrowly. All documents produced should include all attachments, exhibits, addendums, and appendices.

If [REDACTED] does not produce a requested document, it should state the efforts made to locate the requested document. In addition, [REDACTED] must state whether

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the requested document ever existed, existed but was destroyed, or existed but was misplaced.

Please provide all hard copy documents and Electronically Stored Information (ESI) formatted for Concordance/Opticon. All documents originating from hard copy should be produced as TIFF or JPG named and branded with the Bates number. All ESI sourced documents (e.g. Email, Microsoft Word, Excel, PowerPoint, etc.) should be provided as both Bates branded TIFF or JPG and in “native” format named according to Bates number. Provide E-mails or other documents with embedded attachments linked in a way that makes it clear that the documents are related. Documents should be de-duplicated and produced in color where necessary, with custodian, source and other information included as described in the attached addendum. Please remove any password protection or encryption from the individual files, or provide any passwords, encryption keys or certificates necessary to view the files.

These documents may be produced in read-only form on CD, DVD, or hard drive. To ensure readability of any requested document in electronic format, provide the PDF or TIFF files with an image resolution of at least 300 dots per inch (dpi). To the extent that any electronic indexes or other listings relating to the requested documents are created in preparation for submitting them to the Internal Revenue Service, please provide that information with your response to assist in organizing and reviewing the documents.

The attached addendum provides additional guidelines.

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Definitions

The following definitions apply to this IDR:

- a. For the purpose of this request, the words “documents,” “records” or “data” refer to any materials of any kind that are written, printed, typed, reproduced graphically, visually, aurally, electronically, or by any other means, including but not limited to:
 - Contracts, agreements, plans, papers, summaries, opinions, reports, commentaries, communications, correspondence, memoranda, minutes, notes, comments, messages, studies, graphs, diagrams, photographs, charts, projections, tabulations, analyses, questionnaires and responses, work papers, data sheets, statistical or informational accumulations, computer databases, computer disks and formats, data processing cards or worksheets, telexes, telegrams, teletypes, cables, facsimiles, instant messages, voice mail, and similar and related documents, data, and materials;
 - Video and/or audio tapes, cassettes, films, microfilm, video files, sound files, and all other information stored or processed by means of data processing equipment and capable of being retrieved in electronic, printed, or graphic form;
 - Computer stored and generated documents or data, including but not limited to, electronic mail (commonly referred to as “e-

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mail”) and attachments, word processing documents, and spreadsheets;

- Computer database information (including metadata) from document management programs or systems that track or control electronic documents described above.
- b. [REDACTED] includes any current or former employee, officer, principal, director, shareholder, partner, member, consultant, manager, associate, staff employee, independent contractor, agent, attorney, or other representative.
- c. [REDACTED] Insurance Company, Ltd. includes any current or former employee, officer, principal, director, shareholder, partner, member, consultant, manager, associate, staff employee, independent contractor, agent, attorney, or other representative.
- d. [REDACTED] means [REDACTED] Law Offices [REDACTED] and [REDACTED] includes any current or former employee, officer, principal, director, shareholder, partner, member, consultant, manager, associate, staff employee, independent contractor, agent, attorney, or other representative.
- e. “Fronting Carrier #1” means [REDACTED] a company licensed in [REDACTED] “Fronting Carrier #1” includes any trust in which [REDACTED] [REDACTED] is the grantor or beneficiary, and any current or former employee, officer, principal, director, shareholder, partner, member,

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consultant, manager, associate, staff employee, independent contractor, agent, attorney, or other representative.

- f. “Fronting Carrier #2” refers to [REDACTED] a company licensed in the state of [REDACTED] “Fronting Carrier 2” also includes any trust in which [REDACTED] is the settlor, grantor, or beneficiary, and any current or former employee, officer, principal, director, shareholder, partner, member, consultant, manager, associate, staff employee, independent contractor, agent, attorney, or other representative.
- g. “Captive Insurance Program” means the program pursuant to which (1) Fronting Carrier #1 or Fronting Carrier #2 (“Insurers) issued terrorism insurance to [REDACTED] and other insured parties, each of which had one or more related captive insurance companies; and (2) insurers ceded all risks of said terrorism insurance to [REDACTED] and captive insurance companies related to other insured parties. The Captive Insurance Program also includes transactions in which [REDACTED] issued insurance policies directly to [REDACTED]
- h. “Captive” means an insurance company or captive insurance company to whom risks were ceded by Fronting Carrier #1 or Fronting Carrier #2 under the Captive Insurance Program and who directly insured a related Insured Participant.

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- i. “Insured Participant” means a party that purchased one or more terrorism insurance policies from Fronting Carrier #1 and/or Fronting Carrier #2 under the Captive Insurance Program. To the extent that Insured Participant has affiliates, subsidiaries, brother/sister companies, or other similar entities that were also parties to Insured Participant’s insurance policies described above, such affiliates, subsidiaries, brother/sister companies, or other similar entities are also included in the term “Insured Participant.” “Insured Participant” includes any current or former employee, officer, principal, director, shareholder, partner, member, consultant, manager, associate, staff employee, independent contractor, agent, attorney, or other representative.
- j. The term “person” has the meaning as defined in section 7701(a)(1) of the Internal Revenue Code but also includes all of the person’s representatives.
- k. The term “related” person or entity includes the persons specified in sections 267(b), 267(c), 318 and 707(b) of the Internal Revenue Code.
- l. The term “identify” when used in connection with a person means provide the name, title, TIN (as defined in I.R.C. §7701(a)(41)), and current or last known business and residential addresses and telephone numbers.

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- m. The term “risk management” means all activities relating to identifying, calculating, mitigating, reducing, or planning for potential financial, business, or other risk or risk exposure.
- n. **Part II - Documents/Information to be produced:**
 - 1. Produce all insurance policies and contracts for insurance that [REDACTED] purchased from [REDACTED] Fronting Carrier #1 and/or Fronting Carrier #2 for any insurance period(s).
 - a. For each such insurance policy or contract specify the amounts each party insured under the policy paid toward the premium cost.
 - b. For each such insurance policy or contract produce documentation of [REDACTED] payments of premiums, including checks or records of wire transfers, to [REDACTED] Fronting Carrier #1, and/or Fronting Carrier #2.
 - 2. Produce all insurance binders relating to insurance that [REDACTED] purchased from [REDACTED] Fronting Carrier #1 or Fronting Carrier #2 for any insurance period(s).
 - 3. Produce all agreements between or among [REDACTED], [REDACTED], [REDACTED] and/or Fronting Carrier #1 or Fronting Carrier #2.

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4. Produce all agreements between [REDACTED] and [REDACTED] including, but not limited to, engagement letters and contracts.
5. Produce documentation of all payments [REDACTED] made to [REDACTED] under the agreements referenced in the preceding request, including checks and records of wire transfers.
6. Describe how [REDACTED] first was introduced to or learned about:
 - a. [REDACTED]
 - b. Fronting Carrier #1;
 - c. Fronting Carrier #2; and
 - d. the Captive Insurance Program.
7. If [REDACTED] first learned about any of the above entities or program from one or more persons, identify each such person and provide the following:
 - a. Describe the nature of [REDACTED] relationship with such person;
 - b. Describe the communications [REDACTED] had with such person regarding [REDACTED] Fronting Carrier #1, Fronting Carrier #2, and/or the Captive Insurance Program;
 - c. Provide all documents reflecting or related to the communications referenced in the preceding request, No. 7. b., above;

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- d. State whether such person receives or received compensation from [REDACTED] Fronting Carrier #1, and/or Fronting Carrier #2.
8. Describe all documents that mentioned [REDACTED], Fronting Carrier #1, and/or Fronting Carrier #2 that [REDACTED] was provided or otherwise obtained before [REDACTED] began buying insurance from [REDACTED] Fronting Carrier #1 and/or Fronting Carrier #2, including, but not limited to, program descriptions, circulars, brochures, handouts, advertisements, educational materials, marketing materials, sample contracts, sample policies, data or statistical compilations, graphs, and/or charts. For each such document:
 - a. Provide the document;
 - b. Describe the circumstances under which [REDACTED] obtained the document;
 - c. Identify the person who provided the document to [REDACTED]
 - d. State when the document was provided to [REDACTED]
9. Provide each insurance policy, including riders and any other attachments, which provided insurance coverage to [REDACTED] that was issued by a company other than [REDACTED] Fronting Carrier #1 or Fronting Carrier #2 for any insurance period or periods that began on or after January 1, 2007.

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10. Provide the name and address of each insurance broker with whom [REDACTED] consulted or had business dealings during the period from January 1, 2007 through December 31, 2012.
11. Describe [REDACTED] risk management during 2007 and each subsequent year through December 31, 2012.
12. Provide all documents outlining or describing any aspect of [REDACTED] risk management during 2007 and each subsequent year through December 31, 2012.
13. Identify each employee, contractor, and advisor who contributed to [REDACTED] risk management during the period from January 1, 2007 through December 31, 2012, and for each such individual, describe:
 - a. The individual's relationship with [REDACTED] e.g., employee or contractor;
 - b. The individual's role and functions related to risk management for [REDACTED]
 - c. The time frame during which the individual fulfilled the specified risk management roles and functions;
 - d. The approximate amount of time per month the individual spent performing the risk management roles and functions;
 - e. Provide all documents related to or reflecting each individual's contributions to [REDACTED]

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risk management during the above-stated period.

14. With regard to each insurance policy or contract referenced in request No. 1, above, describe all losses that occurred during the 10 years preceding purchase of that policy that would have been covered under the policy if it had been effective on the date of loss. For each such loss:
 - a. State when the loss occurred;
 - b. Specify the total cost of the loss to [REDACTED];
 - c. Identify any insurance policies that paid claims filed by [REDACTED] with respect to such loss and state the amounts paid;
 - d. Specify the amount that the policy [REDACTED] later purchased under the Captive Insurance Program would have paid if the policy had been effective as of the date of loss;
 - e. Provide all records related to each loss.
15. Identify each individual who participated in [REDACTED] decision to enter the Captive Insurance Program and/or to renew participation in each year subsequent to the initial year.
16. Describe all steps taken by [REDACTED] to determine whether to enter the Captive Insurance Program and whether to renew participation in each year subsequent to the

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initial year, including, but not limited to research, feasibility or other studies, cost-benefit analyses, cash flow analyses, cost comparisons, meetings, consultation and/or hiring of actuaries, brokers, and other specialists and experts, data gathering, and loss projections.

17. Provide all documents reflecting or related to the steps taken by [REDACTED] to determine whether to enter the Captive Insurance Program and whether to renew participation in each year subsequent to the initial year.
18. Describe all steps taken by [REDACTED] to determine whether to purchase each policy or contract referenced in request No. 1, above, and/or how much to pay for each policy or contract, including, but not limited to, research, feasibility or other studies, cost-benefit analyses, cost comparisons, meetings, consultation and/or hiring of actuaries, brokers, and other specialists and experts, data gathering, and loss projections.
19. Provide all documents reflecting or related to the steps taken by [REDACTED] to determine whether to purchase each policy or contract referenced in request No. 1, above, and/or how much to pay for each policy or contract.
20. Provide all documents reflecting communications between or among [REDACTED] employees, owners, principals, contractors, and/or advisors regarding whether to enter the Captive Insurance Program, whether to renew

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participation each year, and/or whether to purchase each insurance policy or contract referenced in request No. 1, above.

21. Describe all oral communications between [REDACTED] and [REDACTED] Fronting Carrier #1 and/or Fronting Carrier #2 that preceded [REDACTED] entering the Captive Insurance Program, including:
 - a. When the communications occurred;
 - b. the parties to the communications; and
 - c. The general subject matter of the communications.
22. Produce all documents related to or reflecting the communications referenced in the preceding request, including, but not limited to, memoranda and notes of meetings or telephone calls.
23. Describe all oral communication between [REDACTED] and [REDACTED] Fronting Carrier #1 and/or Fronting Carrier #2 that preceded [REDACTED] renewing participation in the Captive Insurance Program in each year subsequent to the initial year, including:
 - a. When the communications occurred;
 - b. the parties to the communications; and
 - c. the general subject matter of the communications.

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24. Produce all documents related to or reflecting the communications referenced in the preceding request, including, but not limited to, memoranda and notes of meetings or telephone calls.
25. Produce all documents exchanged among [REDACTED] and [REDACTED] Fronting Carrier #1 and/or Fronting Carrier#2 preceding [REDACTED] entering the Captive Insurance Program or renewing participation in the program in each subsequent year. Such documents include, but are not limited to:
 - a. Correspondence and e-mails;
 - b. records;
 - c. computations;
 - d. spreadsheets;
 - e. forms;
 - f. illustrations; and
 - g. draft or sample policies or contracts.
26. Provide all applications for insurance [REDACTED] submitted to Fronting Carrier #1, Fronting Carrier #2, and/or [REDACTED] for any insurance period.
27. Describe all oral communications between [REDACTED] and [REDACTED] Fronting Carrier #1, Fronting Carrier #2, and/or [REDACTED] that preceded the issuance of each insurance policy referenced in request 1, above, including:

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- a. When the communications occurred;
 - b. the parties to the communications; and
 - c. the general subject matter of the communications.
28. Produce all documents related to or reflecting the communications referenced in the preceding request, including, but not limited to, memoranda and notes of meetings or telephone calls.
29. Produce all documents exchanged among [REDACTED] and [REDACTED] Fronting Carrier #1, Fronting Carrier #2 and/or [REDACTED] preceding the issuance of each insurance policy or contract referenced in request No. 1, above. Such documents include, but are not limited to:
- a. Correspondence;
 - b. records;
 - c. verification of loss history;
 - d. forms;
 - e. illustrations; and
 - f. draft or sample policies or contracts.
30. Identify each person who played a role in negotiating, reviewing, and/or evaluating [REDACTED] insurance policies and/or contracts referenced in request No. 1, above, and for each person:

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- a. State the person's relationship with [REDACTED] such as employee or contractor;
 - b. Describe the person's credentials and experience pertinent to insurance, reinsurance, underwriting, and law;
 - c. Describe specifically the person's role with respect to negotiating, reviewing, and/or evaluating [REDACTED] insurance policies;
 - d. State the time frame in which the person provided assistance with respect to negotiating, reviewing, and/or evaluating [REDACTED] insurance policies;
 - e. Provide all documents related to the person's negotiating, reviewing, and/or evaluating [REDACTED] insurance policies.
31. State when each of the policies or contracts referenced in request No. 1, above, was issued and provided to [REDACTED]
- a. Provide all documents related to the issuance and providing of the policies or contracts referenced in request No. 1, above, to [REDACTED] including, but not limited to, cover letters, correspondence, and emails.
32. Describe all costs paid by [REDACTED] in conjunction with formation and/or administration of [REDACTED]
33. Provide documentation, including checks and records of wire transfers, of all payments referenced in the preceding request.

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34. Provide all documents related to formation of [REDACTED] including, but not limited to, correspondence, memoranda, meeting notes, proposals, and applications.
35. Provide all claims, claim forms, and supporting documentation [REDACTED] submitted under the insurance policies or contracts referenced in request No. 1, above.
36. Provide all documents reflecting or related to payments by Fronting Carrier #1, Fronting Carrier #2, and/or [REDACTED] to [REDACTED] for each claim filed under the insurance policies or contracts referenced in request No. 1, above.
37. Describe the Captive Insurance Program's claim adjustment processes.
38. Provide all documents reflecting or related to the claims adjustment process for each claim [REDACTED] submitted under the insurance policies or contracts referenced in request No. 1, above, including, but not limited to, correspondence, documents exchanged during the claims adjustment process; notes and memoranda; analyses; settlement documents; and documents describing or outlining claims adjustment procedures.
39. Identify all individuals who participated on behalf of [REDACTED], [REDACTED] Fronting Carrier #1, Fronting Carrier #2, and/or [REDACTED] in the claims adjustment procedures under the Captive Insurance Program.

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40. For the period from January 1, 2007 through the present, identify all of [REDACTED] current and former owners and state the percentage ownership of each.
41. For the period from January 1, 2007 through the present, identify all of [REDACTED] current and former officers, directors, and principals.
42. Provide all tax opinions or other documents on which [REDACTED] relied in claiming deductions for premium payments under the Captive Insurance Program on its federal income tax returns for the taxable years 2011 and 2012.
43. Identify all persons upon whose advice or statements [REDACTED] relied in claiming deductions for premium payments under the Captive Insurance Program on its federal income tax returns for the taxable years 2011 and 2012.
 - a. Describe the advice or statements rendered by each such person;
 - b. Specify the date(s) on which the advice or statements were rendered;
 - c. Identify the individual(s) to whom the advice or statements were rendered;
 - d. Provide all documents related to or reflecting each such person's advice or statements.
44. Provide copies of all prior and subsequent year Federal Income Tax returns filed by [REDACTED]

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for which it participated in the Captive Insurance Program.

45. For taxable years ended 2011 and 2012 provide the following:
- a. Provide complete copy of financial statements (either audited or compiled), including all footnote disclosures.
 - b. Provide the following accountant's work papers, including but not limited to:
 - i. Chart of accounts and groupings
 - ii. Adjusting and closing entries
 - iii. Year-end working trial balance
 - iv. Year-end tax return work papers and reconciliation schedules including all Schedule M adjustments (including all of the working papers for these adjustments).
 - c. Provide the general ledger and/or detailed trial balance. The general ledger details must be complete and show ALL of the activity in each account.
 - d. Provide an organizational chart. Please include all foreign and domestic subsidiaries, if applicable.
 - e. Provide corporate minutes.
 - f. Provide a description of [REDACTED] activities.

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46. Provide [REDACTED] business plan and other documents related to its goals, objectives, and business strategies.

Information due by [REDACTED] 2014			At next appointment <input checked="" type="checkbox"/>		Mail in <input type="checkbox"/>	
From:	Name and Title of Requester		Employee ID number	Date (mmd/yyyy)		
	[REDACTED] Revenue Agent		[REDACTED]	[REDACTED]		
	Office Location:		[REDACTED]		Phone: [REDACTED]	
					Fax: [REDACTED]	
Catalog Number 23145K		www.irs.gov		Part 1 - Taxpayer's File Copy		Form 4564 (Rev. 9-2008)