SIIA Advocates Balanced IRS Approach to Captive Insurance, U.S. Business Needs

April 16, 2021 – The Internal Revenue Service (IRS) recently issued IR 2021-82, in which it urges participants in abusive micro-captives to exit such structures. This announcement comes as the U.S Tax Court ruled against the taxpayer in the *Caylor Land* case. In addition, the IRS has made it well known that it has formed 12 examination teams to look into various captive transactions. To date the IRS has been successful in limiting cases tried to those whose facts favor the Service and are not reflective of the industry. Thus, creating a negative bias at the examination level of the IRS.

The Self-Insurance Institute of America, Inc. (SIIA) continues to be supportive of curbing abusive practices within the industry and urges participants within potentially abusive transactions to heed the IRS' advice. At the same time, it is important to note that a vast majority of captive participants are utilizing the structure to protect themselves against appropriate risks, as the tax code intended. Among these captive participants are American small- and medium-sized businesses that are utilizing IRC 831(b) to mitigate risks associated with COVID-19, from business interruption, to loss of customers and supply chain interruption.

While the IRS continues activities related to captive insurance, it must also move towards recognizing what an appropriate structure is, and issue appropriate guidance to that purpose. Across the country, businesses are using captives to mitigate against real risk in a time of uncertainty and interruption. In addition, Congress gave the IRS authority to undertake guidance related to abusive captive practices as part of the *PATH Act of 2015*. Six years later, the industry is still waiting, as are policymakers in Congress. As these small businesses are being attacked by the IRS for doing the right thing, many are simply trying to stay afloat.

SIIA and its members are committed to advocating for a strong and reliable captive insurance environment that educates owners, captive managers and others, and establishes best practices for those participants. In addition, SIIA continues to push for appropriate regulatory oversight that does not overreach in its cost and scope.

As part of this advocacy, SIIA is providing ongoing education to policymakers and regulators, including discussions with federal agencies, and looks forward to continued dialogue. In addition, the SIIA Captive Committee is undertaking revisions and updates to the Captive Manager Code of Conduct, which provides a set of ethical business conduct guidance to captive managers in areas ranging from integrity and conflict of interest, to advertising and confidentiality and practice management.

While the IRS may remain focused on certain captive structures, SIIA strongly believes that it must do so in a responsible and fair manner. As American business continues to navigate through COVID disruptions, captive insurance companies remain committed to providing a needed and legitimate risk management tool for these businesses to grow and thrive.