

IRS May Have Picked Wrong Fight With Oxford Microcaptives

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By Erin McManus

When the IRS Large Business and International Division announced it was including microcaptive insurers in its campaign program in 2017, it implied that the entire microcaptive industry was a tax avoidance scheme.

Clients of captive manager Oxford Insurance Co. are fighting back, and while the taxpayers aren't officially winning, the IRS is essentially dropping Oxford cases with stipulated decisions, the latest filed in the Tax Court February 16 in *Series Protected Cell 102, a Series of Oxford Ins. Co. TN LLC v. Commissioner*.

The earlier stipulated decisions provided that the taxpayer had a deficiency of \$1 and no penalty was due. The more recent decisions are forgoing the token dollar.

At least 24 Oxford-managed captive insurers have entered into stipulated decisions, [beginning](#) October 19, 2022, with *Series Protected Cell 76, a Series of Oxford Insurance Co. TN LLC*.

The IRS appears to have moved to stipulated decisions in the Oxford cases after it avoided an actual judicial ruling in *Puglisi v. Commissioner*, Nos. 4796-20, 4799-20, 4826-20, 13487-20, 13488-20, and 13489-20 (T.C. 2021), rejecting its take on the Oxford insurance arrangement.

The agency instead requested a [dismissal](#) despite the taxpayer's desire to go to trial.

Existential Issue

The Sixth Circuit recently affirmed that an Oxford company was an insurance company in its nontax decision in *Eye Centers of America LLC v. Series Protected Cell 1, a Series of Oxford Ins. Co. TN LLC*, No. 22-5138 (6th Cir. 2022), *affg* No. 3:21-cv-00333 (M.D. Tenn.).

In a [petition](#) filed December 8, 2022, *Series Protected Cell 56-CS, a Series of Oxford Ins. Co. LLC*, cited in its case the Sixth Circuit's ruling in *Series Protected Cell 56-CS, a Series of Oxford Ins. Co. LLC v. Commissioner*.

Although neither the appellate nor district court decision was recommended for publication, the decisions could put a dent in an IRS boilerplate argument.

In a deficiency notice to *Series Protected Cell 56-CS*, the IRS made its usual allegation that the captive wasn't an insurance company for purposes of [section 831\(b\)](#), and thus is ineligible for tax treatment under the section.

The IRS denied in its [answer](#) that classification of the other Oxford company as an insurance company was at issue in the nontax litigation.

Impact of Federal Decisions

As with the captive insurer in the federal appeals case, the taxpayer in *Cell 56-CS* is a Tennessee limited liability company and licensed as an insurance company in Tennessee, and the two companies aren't alone.

Tennessee is ranked eighth out of 30 states, including the District of Columbia, that allow for the licensing of captive insurance companies, according to the [Insurance Information Institute](#).

Tennessee is in the Sixth Circuit, so more captive insurance issues — including federal tax issues — are likely to find their way to that venue and possibly to an affirmation of their existence as an insurance company.

The petitioner in *Series Protected Cell 56-CS, a Series of Oxford Insurance Co. LLC v. Commissioner*, No. 25571-22 (T.C. 2023), is represented by James F. Mauro, Emily L. Burdick, and Angelique M. Neal of Dickinson Wright PLLC.