



Treasury and IRS issue final regulations on micro-captive transactions and a revenue procedure facilitating automatic revocation of section 831(b) elections

Tax Alert

Overview

On January 10, 2025, the IRS and Treasury issued final regulations regarding micro-captive transactions of interest and micro-captive listed transactions ([T.D. 10029](#)) (the “Final Regulations”). The Final Regulations generally follow proposed regulations issued in April 2023 ([REG-109309-22](#)) (the “Proposed Regulations”) and also adopt a few mostly taxpayer-favorable changes.

The Final Regulations

Key implications to taxpayers and material advisors:

- *Participants* – Each taxpayer that participated in a micro-captive transaction needs to consider its filing obligations, including [Form 8886](#), *Reportable Transaction Disclosure Statement*, disclosing participation in either a listed transaction or a transaction of interest.
 - Participants in a micro-captive transaction who have filed an income tax return (including an amended return (or Administrative Adjustment Request (AAR)) for certain partnerships) reflecting their participation before January 14, 2025, the date the Final Regulations were finalized and published in the Federal Register, are required to report such participation on Form 8886 provided that the period of limitations for assessment of tax has not ended on or before the finalization date. Any required Forms 8886 need to be filed with the Office of Tax Shelter Analysis (OTSA) within 90 days of the Proposed Regulations being finalized.
 - A Form 8886 needs to be attached to the taxpayer's tax return for each taxable year in which they participate in the transaction, and this may require a taxpayer to amend prior year returns. A copy of the disclosure statement must be sent to the OTSA when the disclosure statement is *first* filed by the taxpayer pertaining to a particular reportable transaction.

- **Material Advisors** – Material advisors who made a tax statement with respect to a micro-captive transaction after January 14, 2019, are required to make disclosures in accordance with [section 6111](#) and maintain an investor list pursuant to [section 6112](#)

Highlights of the Final Regulations are as follows:

- The Final Regulations distinguish between micro-captive listed transactions ([Treas. Reg. § 1.6011-10](#)) and micro-captive transactions of interest ([Treas. Reg. § 1.6011-11](#)).
 - **A Micro-captive listed transaction** (Treas. Reg. § 1.6011-10(c)) – is a [section 831\(b\)](#) captive transaction that (1) involves a “financing factor” AND (2) has experienced a sufficiently “low” loss ratio as defined in the regulation.

NOTE: The Final Regulations set forth a conjunctive test (*that is*, the captive transaction must exhibit both “bad” features described below to be branded a listed transaction) which is much more taxpayer-friendly than the disjunctive test in the Proposed Regulations under which the presence of either feature would cause a captive transaction to be a listed transaction.

 1. **Financing factor:** This factor is met if the section 831(b)-electing captive insurance company at any time during its most recent 5 taxable years directly or indirectly made available as financing or otherwise conveyed or agreed to make available or convey to any owner, insured, or person related to an owner or an insured of the captive (“Recipient”), in a transaction that did not result in taxable income or gain to the Recipient, any portion of the payments under the insurance/reinsurance contract, such as through a **guarantee, a loan, or other transfer of Captive’s capital**, or made such financings or conveyances prior to the Financing Computation Period that remain outstanding or in effect at any point in the taxable year for which disclosure is required.
 - o Under the Final Regulations, for purposes of this factor, any amounts that a captive made available to a Recipient as described above are presumed to be portions of the payments under the insurance/reinsurance contract issued or reinsured by the captive to the extent such amounts are in excess of captive’s cumulative after-tax net investment earnings minus any outstanding financings or conveyances (Treas. Reg. § 1.6011-10(c)(1)).
 2. **Low loss ratio:** This test is met if the amount of liabilities incurred for insured losses and claim administration expenses during the most recent 10 taxable years of the captive is less than **30%** of the amount equal to premiums earned less policyholder dividends paid by the captive during that same period. (Treas. Reg. § 1.6011-10(c)(2)).

NOTE: This threshold was substantially lowered from the 65% threshold included in the Proposed Regulations.
 - **A Micro-captive transaction of interest** (Treas. Reg. § 1.6011-11(c)) – is a section 831(b) captive transaction in which the captive has experienced a “low” loss ratio.

This test is met if the amount of liabilities incurred by the captive for insured losses and claim administration expenses during the most recent 10 taxable years of the captive is less than **60%** of the amount equal to premiums earned less policyholder dividends paid by the captive during this period. **NOTE:** This threshold was lowered from the 65% threshold included in the Proposed Regulations.
- The Final Regulations provide an exception from listed transaction and transaction of interest treatment for “consumer coverage captives” as defined in [Treas. Reg. §§ 1.6011-10\(d\)\(2\)](#) and [1.6011-11\(d\)\(2\)](#), which is available for captives offering solely coverage in connection with products or services purchased by the insureds when at least 95% of such business is done with unrelated customers.

- Treas. Reg. §§ 1.6011-10(g)(2) and 1.6011-11(g)(2) provide relief from filing Forms 8886 for taxpayers who have finalized settlement agreements with the IRS with respect to their section 831(b) transaction. The filing relief is granted for years covered by the settlement agreement.
- Applicability date: **January 14, 2025**.
 - If a captive has requested the consent of the Secretary to revoke its section 831(b) election prior to January 1, 2026, the transaction is not identified as a listed transaction for taxable years ending before January 1, 2026.

Revenue Procedure 2025-13 allows for “fee free” automatic revocation of section 831(b) elections

On January 13, 2025, contemporaneously with issuance of the Final Regulations, the IRS issued [Rev. Proc. 2025-13](#) under which taxpayers may request automatic revocation of their section 831(b) elections—either for 2025 or, if certain conditions are met, for 2024.

- A user fee is not required for a revocation request.
- Revocation request does not require a private letter ruling (PLR) request.
- The key condition to revoke for 2024 rather than for 2025 is that the company does not have any NOLs to be carried over to the revocation year.
- The taxpayer must represent they will not make another section 831(b) election for the five years after the revocation year.



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