

Dear [Honorable Senator or Congressperson]:

On March 21, 2022, Judge Travis McDonough of the United States District Court Eastern District of Tennessee issued an important ruling vacating IRS Notice 2016-66 (the “Notice”) on two grounds. First he ruled that Notice was issued in contravention of the Administrative Procedures Act—that is, without first engaging in Notice and Comment rule making as required by law.

But even more importantly, he ruled that the Notice “arbitrarily and capriciously” designated certain types of captive insurance arrangements as “transactions of interest”. He found that the IRS had no “underlying facts and data showing that micro-captive insurance arrangements have a potential for tax avoidance or evasion”. He continued, “[T]he administrative record fails to include relevant data and facts supporting the IRS’s decision to designate micro-captive arrangements as transactions of interest, and, thus, reportable transactions.”

Many in the captive insurance industry have long contended that the IRS is attempting to accomplish via an improper and illegal terror campaign that which it has been entirely unable to accomplish via the courts, in the Congress or by following legally-required notice and comment rule making practices—that is, to render Internal Revenue Code Section 831(b), which was the target of the Notice, moot and effectively unusable. Notice 2016-66 was just one means by which the IRS pursued this illegal purpose. Judge McDonough’s ruling that the burdens placed upon taxpayers and material advisors by virtue of the Notice had no rational justification in “data or facts” proves these contentions TRUE.

In an attempt protect taxpayers from continued IRS misconduct related to this illegal Notice, the Judge ordered the IRS to “return to taxpayers and material advisors all documents and information produced pursuant to Notice 2016-66”. While that step is much appreciated, the terrible fact is that every one of the thousands of taxpayers who complied with the Notice will never again see a dime of the tens to hundreds of thousands of dollars that \*each\* had to spend

complying with it over the last five years, all under threat of draconian penalties and even criminal sanctions for noncompliance.

The judge's finding that the IRS acted illegally to force taxpayers and their advisors into compliance with an illegal rule comes at a time when the IRS is begging Congress for more funding and more power. However, given the IRS's history of ignoring laws and running roughshod over taxpayers and their advisors—a lamentable history that even Judge McDonough and the United States Court of Appeals for the Sixth Circuit have taken explicit notice of—Congress should deny these requests for additional funding and power or, at a minimum, ensure that they are accompanied by sufficient taxpayer protections.

It is essential that the IRS be held accountable for its repeated and continued instances of misconduct. Only Congress is capable of doing that. Please help.

Respectfully,

[Your Name]

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