

REV-PROC, 2003FED ¶46,210 **Internal Revenue Service: Advance rulings: Areas of nonissuance: Captive insurance companies: Ruling requests.** —, **Rev. Proc. 2002-75** I.R.B. 2002-52, 997 (December 10, 2002) **Rev. Proc. 2002-75**, 2002-2 CB 997, I.R.B. 2002-52, 997, December 10, 2002.

[[Code Secs. 162](#) and [816](#), and [Statement of Procedural Rules Sec. 601.201](#)]

Internal Revenue Service: Advance rulings: Areas of nonissuance: Captive insurance companies: Ruling requests. — The IRS has modified [Rev. Proc. 2002-3](#), I.R.B. 2002-1, 117, by deleting sections 4.01(11) and 4.01(41). Those sections provided that the IRS will not ordinarily rule on the application of and [Code Sec. 816](#) to certain insurance arrangements. The IRS will now consider ruling requests regarding the proper tax treatment for captive insurance companies. The procedure is effective December 10, 2002. [Rev. Proc. 2002-3](#) is modified. Back references: [¶8522.3945](#), [¶26,003.10](#) and [¶43,360.60](#).

SECTION 1. PURPOSE AND NATURE OF CHANGE

The purpose of this revenue procedure is to modify [Rev. Proc. 2002-3](#), 2002-1 I.R.B. 117, by deleting sections 4.01(11) and 4.01(41). Sections 4.01(11) and 4.01(41) provide that the Internal Revenue Service will not ordinarily rule on the application of §§162 and 816 of the Internal Revenue Code to certain insurance arrangements.

SECTION 2. BACKGROUND

.01 [Rev. Proc. 2002-3](#) sets forth those provisions of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (Passthroughs & Special Industries), the Associate Chief Counsel (Procedure and Administration), and Division Counsel/Associate Chief Counsel (Tax Exempt and Governmental Entities) relating to issues on which the Internal Revenue Service will not issue letter rulings or determination letters.

.02 Section 4 of Rev. Proc. 2002-3 sets forth those areas in which rulings or determination letters will not ordinarily be issued.

Section 4.01(11) provides as follows:

Section 162. —Trade or Business Expenses. —Whether the requisite risk shifting and risk distribution necessary to constitute insurance are present for purposes of determining the deductibility under §162 of amounts paid (premiums) by a taxpayer for insurance.

Section 4.01 (41) provides as follows:

Section 816. —Life Insurance Company Defined. —Whether the requisite risk shifting and risk distribution necessary to constitute insurance are present for purposes of determining if a company is an “insurance company” under §1.801-3(a) of the Income Tax Regulations, unless the facts of the transaction are within the scope of [Rev. Rul. 78-338](#), 1978-2 C.B. 107, or [Rev. Rul. 77-316](#), 1977-2 C.B. 53.

.03 The Service has provided guidance regarding whether, for federal income tax purposes, an arrangement

constitutes insurance and whether an entity that provides insurance to an insured that has an ownership interest in that entity will be treated as an insurance company. [Rev. Rul. 77-316](#) involved an insurance subsidiary that assumed only the risks of its owners and/or affiliates and concluded that to the extent the assumed risks were not transferred outside of the economic family, the transaction would not be treated as insurance. Under the economic family theory, the amounts paid as premiums to the subsidiary would not be insurance premiums deductible under §162 and the subsidiary would not be an insurance company. In [Rev. Rul. 78-338](#), the Service distinguished the economic family theory advanced in [Rev. Rul. 77-316](#) and concluded that premiums paid to an insurer owned by its 31 insureds-shareholders were deductible under §162.

.04 [Rev. Rul. 2001-31](#), 2001-1 C.B. 1348, announced that the economic family theory would no longer be followed, [Rev. Rul. 77-316](#) was obsolete, and [Rev. Rul. 78-338](#) was modified. Rev. Rul. 2001-31 also stated that certain captive transactions may be challenged based upon the facts and circumstances of each case.

.05 Since publication of Rev. Rul. 2001-31, the Service has provided additional guidance on the tax treatment of certain captive insurance arrangements. [Rev. Rul. 2002-89](#), 2002-52 I.R.B., addressed arrangements between a parent corporation and its wholly-owned captive insurance subsidiary that conducted varying amounts of insurance business with unrelated parties. In [Rev. Rul. 2002-90](#), 2002-52 I.R.B., the Service concluded that the premiums paid by 12 operating subsidiaries to a captive insurance subsidiary owned by a common parent are deductible under §162. Finally, in [Rev. Rul. 2002-91](#), 2002-52 I.R.B., the Service concluded that a group captive, which was formed by fewer than 31 unrelated insureds, with each insured having no more than 15% of the total risk, was an insurance company.

.06 Consistently with the case-by-case approach announced in [Rev. Rul. 2001-31](#), and the guidance provided in [Rev. Rul. 2002-89](#), [Rev. Rul. 2002-90](#), and [Rev. Rul. 2002-91](#), this Revenue Procedure deletes sections 4.01(11) and 4.01(41) of [Rev. Proc. 2002-3](#). The Service will now consider ruling requests regarding the proper tax treatment of a captive insurance company. However, some questions arising in the context of a captive ruling request are so inherently factual (within the meaning of section 4.02(1) of [Rev. Proc. 2002-3](#)) that contact should be made with the appropriate Service function prior to the preparation of such request to determine whether the Service will issue the requested ruling. In addition, for information concerning the Large and Mid-Size Business Division Pre-Filing Agreement Program, see [Rev. Proc. 2001-22](#), 2001-1 C.B. 745.

SECTION 3. PROCEDURE

[Rev. Proc. 2002-3](#) is modified by deleting section 4.01(11) and section 4.01(41).

SECTION 4. INQUIRIES

Inquiries regarding whether the Service considers a proposed captive transaction so inherently factual that it cannot rule, should be directed to Chief, Branch 4, Office of the Associate Chief Counsel (Financial Institutions & Products) at (202) 622-3970 (not a toll-free call).

SECTION 5. EFFECT ON OTHER DOCUMENTS

[Rev. Proc. 2002-3](#) is modified.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective December 10, 2002.

DRAFTING INFORMATION

The principal author of this revenue procedure is William Sullivan of the Office of the Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Mr. Sullivan at (202) 622-3970 (not a toll-free call).