
Richard J. Sapinski

SILLS CUMMIS & GROSS P.C.

In 1977, IRS issued Rev. Rul. 77-316,1 which held that when a corporate parent’s insurance subsidiary has an “insurance company” for U.S. tax purposes, the payor entity (either the corporate parent or one or more of its subsidiaries) receives a current income tax deduction for premiums paid rather than having any deduction delayed until a “loss” occurs and limited to the amount of the loss. On the other end of the spectrum, if the transaction does not fit the circumstances that led to Rent-A-Center’s (“RAC”) successful decision, the IRS traditionally has disallowed tax deductions for insurance providing the coverage is respected as an “insurance company,” it enjoys tax advantages typically unavailable outside the insurance context.

For the next 15 years, the federal courts decided numerous captive insurance cases. Most of these cases were brought in the U.S. Tax Court. Over that time, the IRS’s efforts met with only modest success. The IRS universally prevailed in denying deductions to a parent entity but reversed regarding the tax shelter transactions of the late 1990s and early 2000s, where huge tax shelters and claims of the premium payments between brother-sister entities were reasonable in amount, and that RAC had valid and substantial business reasons for needing to form Legacy.1 Judge Foley was highly critical of the Tax Court’s decision as to summarize the facts and claims whether what was “insured” is, in fact, an insurable risk rather than a business risk. Whether what was “insured” is, in fact, an insurable risk rather than a business risk

Richard J. Sapinski is Vice Chair of the Sills Cummins & Gross P.C. Tax Litigation Practice Group. His practice involves white collar criminal defense on both federal and state levels and civil and criminal litigation as well as international tax planning and compliance issues. The views and opinions expressed in this article are those of the author and do not necessarily reflect those of Sills Cummins & Gross P.C.


Please email the author at rsapinski@sillscummis.com with questions about this article.