



Captive Insurance Companies

Captive vs. Small Companies

- “Captive” means the insured's of insurance company are affiliated with the owners of the insured company(ies)
- “Small” means the insurance company falls under one of the sections of the tax code controlling small insurance companies. We will focus here on IRC Section 831(b).

IRC Sec. 831(b)

- 831(b) Alternative tax for certain small companies
- (1) In general
- In lieu of the tax otherwise applicable under subsection (a), there is hereby imposed for each taxable year on the income of every insurance company to which this subsection applies a tax computed by multiplying the taxable investment income of such company for such taxable year by the rates provided in section [11 \(b\)](#).
- (2) Companies to which this subsection applies
- (A) In general
- This subsection shall apply to every insurance company other than life (including interinsurers and reciprocal underwriters) if—
- (i) the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed \$1,200,000, and
- (ii) such company elects the application of this subsection for such taxable year.
- The election under clause (ii) shall apply to the taxable year for which made and for all subsequent taxable years for which the requirements of clause (i) are met. Such an election, once made, may be revoked only with the consent of the Secretary.

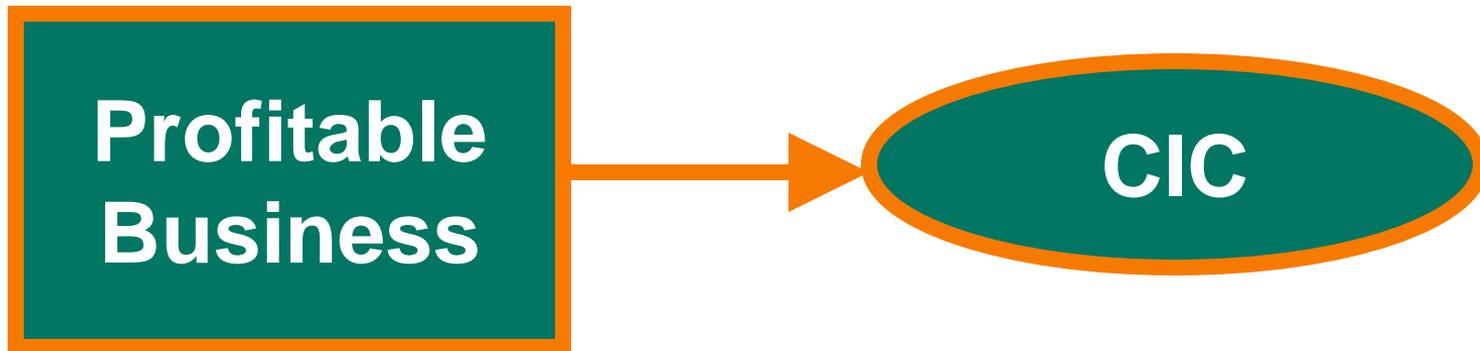
CIC Taxation

IRC 831(b) provides that:

- Insurance companies with less than \$1.2 million of annual premium pay \$0 income tax on insurance profits.
- Investment income is taxed as income to C-corporation.
- 831(b) must be timely elected and cannot be revoked without the permission of the Secretary.

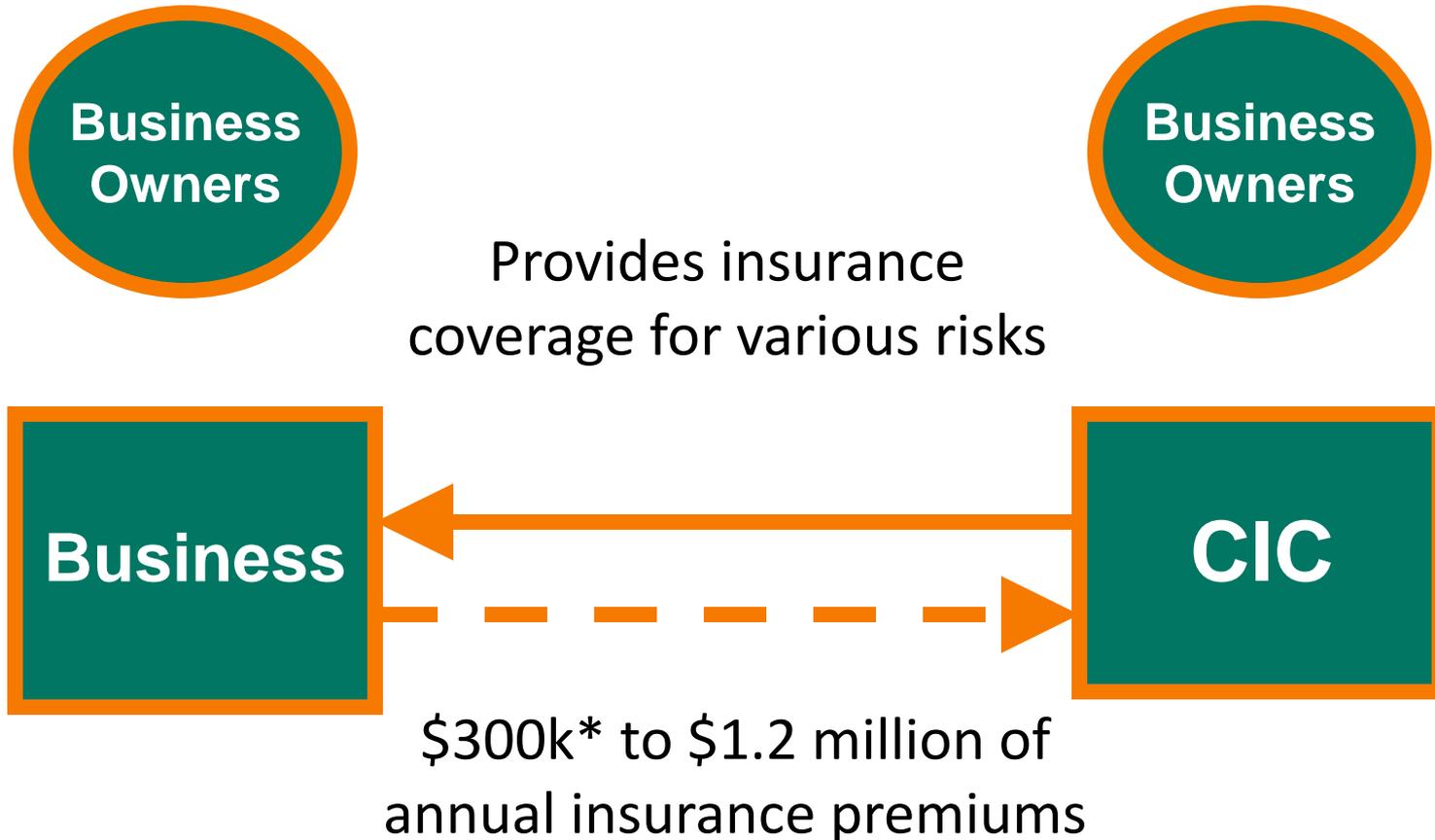
Tax Treatment of Premiums

- Profitable business pays up to \$1,200,000 in premiums each year.



- Premiums may be deductible under sec. 162

Captive Insurance Company- 831(b)



* Practical not statutory

Economic Family Doctrine

- Adopted by the IRS in 1977 (Rev. Rul. 77-316)
- Parent corporations and their subsidiaries form an economic family.
- If the ultimate burden of loss is retained in the family, there is no risk shifting or risk distribution (requirements to be considered insurance as set forth by the Supreme Court in Helvering v. LeGierse, 312 U.S. 531 (1941))
- Therefore, premium payments are treated as capital contributions or dividends and are not deductible under Sec. 162

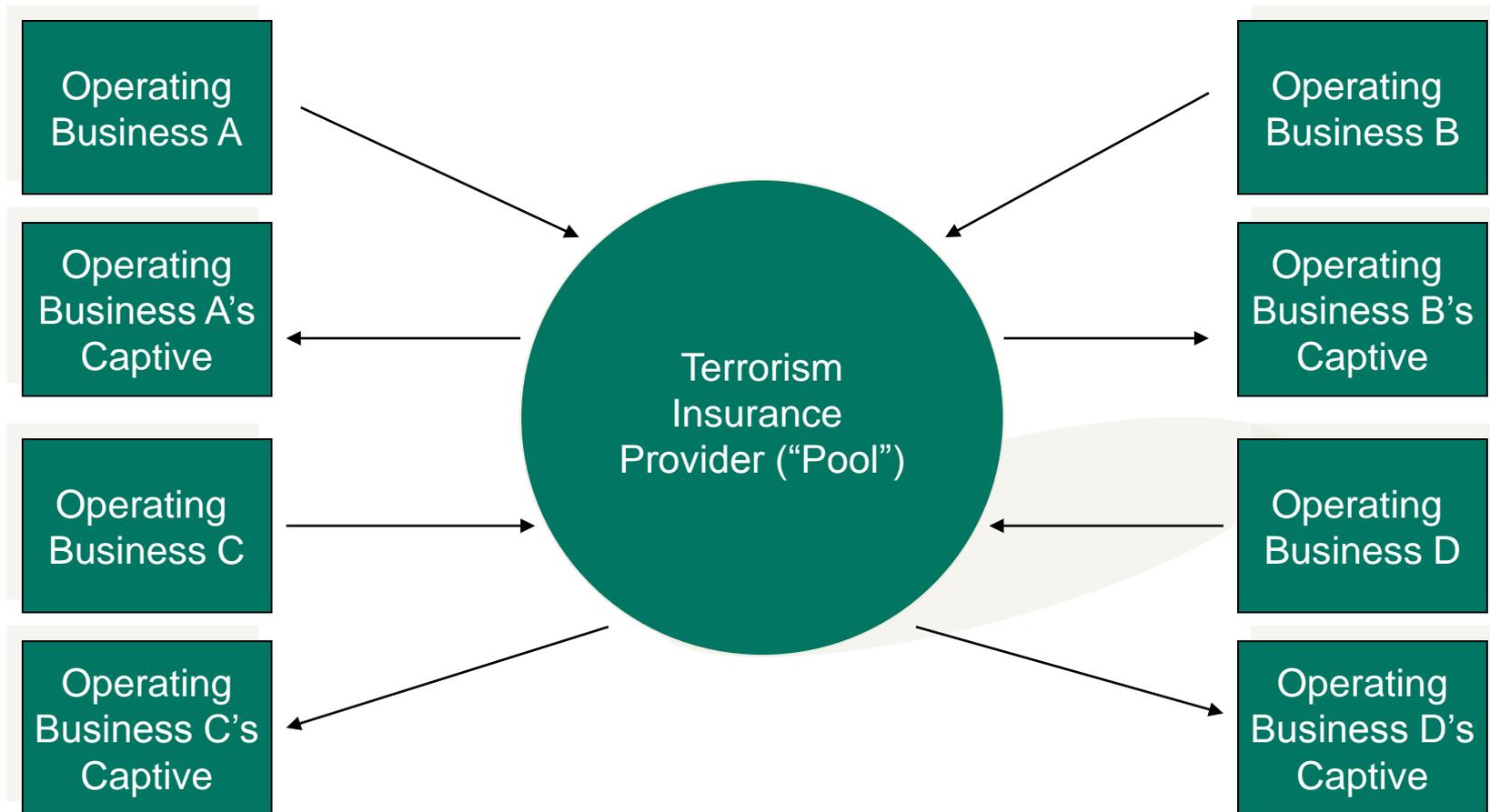
Economic Family Doctrine

- IRS' economic family doctrine was not accepted by the courts (See Humana Inc., 881 F. 2d 247)
- IRS abandoned doctrine in Rev. Rul. 2001-31
- Adopted instead a facts and circumstances approach for determining if transactions constitute insurance (See Malone & Hyde, Inc., 62 F.3d 835, 76 AFTR2d 95-5962 (CA-6, 1995), rev'g TCM 1993-585)
- IRS continued to apply facts and circumstances test (See TAM 200149003, FSA 200202002, Notice 2002-70)

Risk Distribution

- Risk Distribution – does the insurance company distribute its risk to other insureds?
 - Rev. Ruls. 2002-89 (50%); 2002-90 (12 subs or no more than 15% of total premium); 2002-91 (Group Captive-7 unrelated insureds)
 - Harper Group and Includable Subsidiaries v. Commissioner, 96 T.C. 45 (1991): Because the CIC had at least 30% unrelated third party risk, the arrangement constituted insurance
 - Rev. Rul. 2005-40: risk distribution requirement is met if CIC has 12 or more insureds (10% risk distribution insufficient; DRE disregarded for RD)
 - Affiliated companies count, but not single-member LLCs
 - Compare to Humana, Inc. v. Commissioner, 881 F.2d 247 (6th Cir. 1989) in which sums paid to parent company's Captive Insurance subsidiary, on behalf of several dozen parent company subsidiaries was sufficient risk distribution to constitute insurance

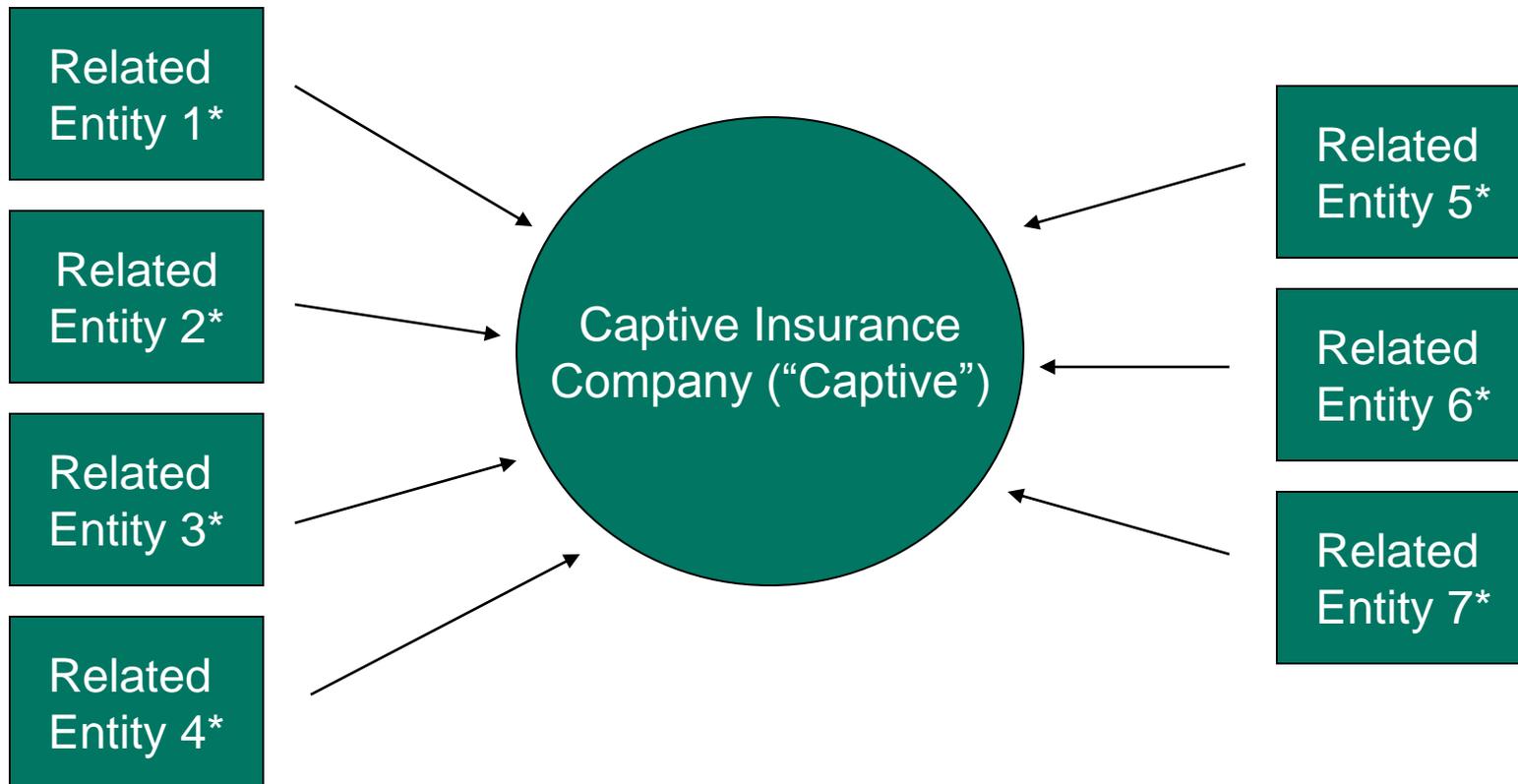
Achieving Risk Distribution Under Revenue Ruling 2002-89



Achieving Risk Distribution Under Revenue Ruling 2002-89

- Each Operating Business will pay 30%-50% of its captive premium to the Pool in return for terrorism coverage.
- The Pool then reinsures its risk with each Operating Business Captive in the same percentage that the Operating business's premium represents.
- Example: Assume Operating Business A pays \$200k to the Pool and that \$200k premium represents 2% of all premiums received by the Pool. The Pool will then pay Operating Business A's Captive \$200k to reinsure 2% of the Pool's total risk (i.e. 2% of all of the other participating Operating Business's risk).

Achieving Risk Distribution Under Revenue Ruling 2002-90



- Related entities pay premiums directly to the Captive for various lines of P&C insurance.
- Each Related Entities premium cannot be less than 5% nor more than 15% of the total premiums received by the Captive.

Recent IRS Guidance

- December 31, 2004 - IRS releases rulings showing non-sham, bona fide captive insurance companies (TAMs 200453012 & 200453013)
- Rev. Rul. 2005-40, 2005-2 CB 4. A company that insures a single corporation cannot be an “insurance company”, even if the insurer is unrelated to the insured, premiums are arm’s length and the insurer is adequately capitalized, since there is no risk distribution.
- Ltr. Rul. 200644047. An insurance subsidiary insured the risks of its parent. Although various physicians performing work for the parent were also insured, the Service concluded that the risks insured were essentially that of the parent. (Rev. Rul. 2005-40)
- TAM 200816029. For purposes of applying Rev. Rul. 2005-40, the common GP of several ltd. partnerships is treated as one insured.
- PLR 200907006. Service concluded that there was adequate risk distribution to warrant the company being treated as an insurance company. (Rev. Rul. 2002-91)

Recent IRS Guidance (cont.)

- PLR's 200950016 & 200950017. Service finds reinsurance pools adequately satisfy risk distribution requirements as provided in Rev. Rul. 2002-90.
- PLR 201030014. Service finds that a Small Captive (831(b)) is recognized as a valid insurance company. "Risk distribution incorporates the statistical phenomenon known as the law of large numbers. Distributing risk allows the insurer to reduce the possibility that a single costly claim will exceed the amount taken in as premiums and set aside for the payment of such a claim."

Why Own a Small Insurance Company?

- Estate Planning
 - Best practice: CIC owned by dynastic trust for heirs
 - Jurisdiction shopping for unlimited Rule Against Perpetuities: AK, DE, FL (360 yrs.)
 - Can structure to allow client shared access to investments
- Buy-out Retirement Planning
 - CIC can tie into a business buy-out/retirement plan/employee benefits
 - More tax efficient than traditional methods
- Tax Planning
 - Premiums can be tax deductible
 - Benefit to family can be estate/gift tax free
 - Profit can be accessed at lower tax rates

Risk Management Concept

Each business or practice has risks that it currently does not insure against, including:

- Deductibles & co-payments in existing policies:
 - Medical malpractice
 - Commercial general liability
 - Premises and products liability
 - E&O, D&O and others
- Liability risks for which there is no coverage
 - Employee claims, partnership liability, government liability, etc.
- Economic risks for which there is no coverage
 - Loss of income, revenue cutbacks, loss of key person, loss of key contract, etc.

Tax Planning Benefits

- Deductibility of premiums
 - Assuming premiums are market comparable or can be valued by an actuary
- Taxation of CIC's profits
 - 831(b) provides tax exemption from premium tax and from underwriting profit.
 - 831(b) must be elected timely and cannot be revoked without permission of Secretary
 - Federal Tax on investment income only
- Retirement
 - Certain investments and structures could allow client to access CIC invested funds tax efficiently.
- Estate/Gift Taxes
 - Could transfer millions to heir tax efficiently.

The Ground Rules

- Premiums and policies must be market-comparable
- Actuarial support needed
- Insurance formalities complied with
- Risk distribution must be present

Domiciles

- Form CIC in KENTUCKY, DELAWARE OR HAWAII
- Favorable Captive legislation regarding fees and investment options
- Annual State premium tax approximately \$5,000 (\$2,500 in Hawaii).

Captive Insurance Company Policies

- Everything a business currently self-insures:
 - Deductibles
 - Excess losses above coverage limits
 - Construction defect
- Loss of income as a result of:
 - Losing key employee/salesperson
 - Loss of license/professional risks (professionals)
 - Loss of a key contract (Gov't. contractors)
 - Weather, terrorism, etc.
- Liability defense expenses:
 - Employee lawsuits – sexual harassment, wrongful termination, discrimination, etc.
 - Environmental issues
 - Professional claims
- Anything that might be considered a “Lloyd’s” risk

Examples of Captive Insurance Policies

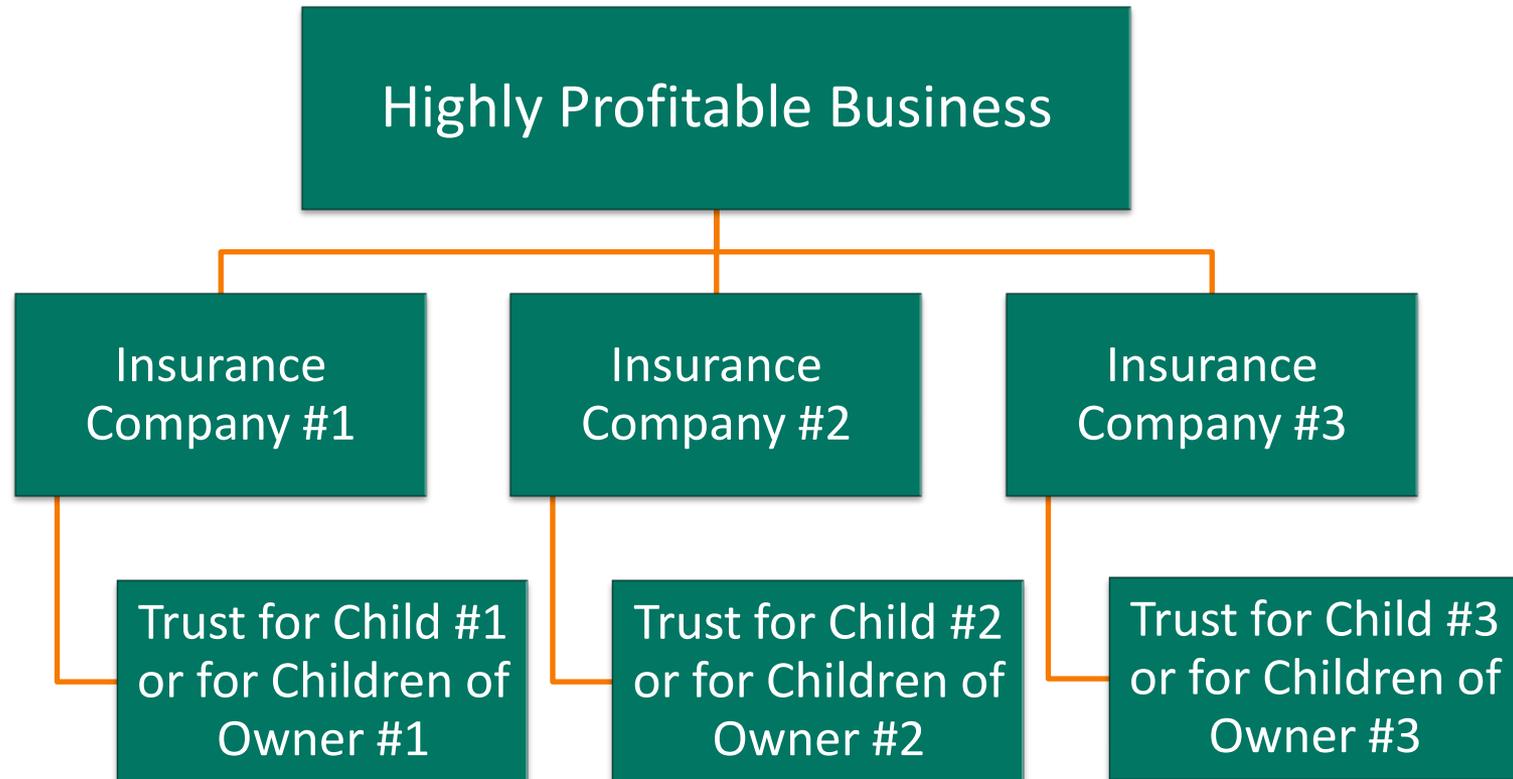
Written

- Professional liability Gap Coverage
- HIPAA/Billing Audit Liability
- Contractual Liability
- General Liability Gap
- Cyber Liability
- Environmental Liability
- Excess Environmental Liability
- Labor Shortage/Strike Loss Reimbursement
- Employment Practices
- Employee Dishonesty
- Patent Infringement/Intellectual Property
- General Liability Gap
- General Liability Retention
- Property Management Professional
- Professional Misconduct
- Product Recall
- FDA Administrative Actions Liability
- Product Liability
- Directors and Officers Liability
- Punitive Damages
- Loss of Key Employee
- Deductible Reimbursement (Property, Workers Comp, General Liability, Product Liability)

General Leverage for Larger Clients

- Clients' children (or trusts) can own CICs
- Each child (or trust) can own one CIC (children under age 21 are attributed to their parent)
- Client can still be the manager of the CIC and control the investments of CIC
- Effectively, this option saves current income taxes (35%-47%) to client and future estate taxes (35%) on net proceeds
- Children will only pay capital gains or dividend tax rates (currently 15% federal) in future

Multiple CIC Structure



Parent's Business could pay up to \$1.2 million per year into EACH child's CIC or into a CIC for each owner's children. §1563 attribution rules apply. Children under age 21 are attributed to the parent.

Real Life Examples- Results

Do Nothing with \$1.2M

- No risk management, profit, asset protection, buy-out/retirement benefits of CIC
- Earn money, income taxes
- Taxable/tax deferred investments
- Die, pay estate taxes

CAPTIVE 831(B)

- Risk management, profit, asset protection, buy-out/retirement benefits of CIC
- Create dynastic trust to own CIC
 - CIC invests in tax deferred investments
 - Tax efficient withdrawals from LLC

Income Tax with No Captive

	2011	2012	2013
Filing Status	Joint	Joint	Joint
Personal Exemptions	2	2	2

Ordinary Income	1,200,000	1,200,000	1,200,000

Adjusted Gross Income	1,200,000	1,200,000	1,200,000

Standard Deduction	11,600	11,600	9,650

Taxable Income	1,181,000	1,181,000	1,190,350

AMTI Net of Exemption	1,200,000	1,200,000	1,200,000

Schedule or Table Tax	383,222	383,222	435,439
Tentative Minimum Tax	332,500	332,500	332,500

Income Tax Benefits with Captives

	Captive Model			Total	Non-Captive Scenario
	Year 1	Year 2	Year 3	Cash	
Premiums	1,200,000	1,200,000	1,200,000	3,600,000	3,600,000 No Premium paid
Savings Tax (tab 2)	460,000	460,000	510,000	1,430,000	(1,440,000) Tax Costs
Mgmt Fees	(80,000)	(55,000)	(55,000)	(190,000)	
Tax benefit	32,000	22,000	22,000	76,000	
Net Savings	412,000	427,000	477,000	1,316,000	
Projected Earnings @ 3%	37,080	36,000	-	73,080	151,200 Earning @ 7% on after tax dollars
Projected Cash Balance Prior to liquidation				3,559,080	
Capital Gain Tax on Liquidation				(711,816)	
Net Cash Available				2,847,264	2,311,200
Estate Tax Obligation				-	(808,920)
Net Cash After All Taxes				2,847,264	1,502,280
Increase in net worth after all expenses					1,344,984

Questions

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