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# IRS Key Enforcement Issues

# Objectives

- At the end of this presentation you will be able to:
  - Describe key Exam priorities
  - List new tax law legislation impacting Exam compliance activities
  - Define Virtual Currency
  - Describe a Syndicated Conservation Easement
  - Discuss IRS enforcement activities with respect to micro-captive transactions

## Exam Priorities

- New Tax Law Implementation
- Digitalization Efforts
- Gig Economy Strategy
- Nonfiler Strategy
- Emerging Issues



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# New Tax Law Implementation

## Families First Coronavirus Response Act (FFCRA)

- Section 7001: Payroll Credit for Required Paid Sick Leave
- Section 7002: Credit for Sick leave for Certain Self-Employed Individuals
- Section 7003: Payroll Credit for Required Paid Family Leave
- Section 7004: Credit for Family Leave for Certain Self-Employed Individuals
- Section 7005: Special Rule Related to Tax on Employers

## Coronavirus Aid, Relief and Economic Security Act (CARES)

- Section 2202: Special rules for use of retirement funds
- Section 2203: Temporary waiver of required minimum distribution rules for certain retirement plans and accounts
- Section 2205: Modification of limitations on charitable contributions
- Section 2301: Employee Retention Credit for Employers Subject to Closure Due to COVID-19
- Section 2302: Delay of payment of employer payroll taxes
- Section 2303: Modifications for net operating losses

## Coronavirus Aid, Relief and Economic Security Act

- Section 2304: Modification of limitation on losses for taxpayers other than corporations
- Section 2305: Modification of credit for prior year minimum tax liability of corporations
- Section 2306: Modification of limitation on business interest
- Section 2307: Technical amendments regarding qualified improvement property
- Section 3606: Advance Refunding of Credits.
- Section 4007: Suspension of certain aviation excise taxes



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# Digitalization Efforts



## Taxpayer Digital Communication (TDC)/Secure Messaging

- Secure Messaging
  - Interaction using secure online environment
- Correspondence Examinations
  - SB/SE Schedule A, Schedule C, and Credit audits by mail
  - Currently in Philadelphia and Brookhaven Correspondence Examination Operations
- Invitation only
  - Taxpayers and Representatives receive TDC reply option in the audit letter

## TDC/Secure Messaging

- Representative Participation
  - Taxpayers signed up for Secure Messaging first
  - Taxpayers and their representatives must pass the IRS Secure Access
- Plans underway to expand to more campuses and in field operations
- Customer Satisfaction extremely high



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# Gig Economy Strategy

# Gig Economy

- Activity where people earn income providing on-demand work, services or goods.
- Utilizes a digital platform such as an app or website.
- Report income earned from the gig economy on a tax return, even if the income is:
  - From part-time, temporary or side work
  - Not reported on an information return form—like a Form 1099-K, 1099-MISC, W-2 or other income statement
  - Paid in any form, including cash, property, goods, or virtual currency

# Gig Economy - Responsibilities

Gig Workers	Digital Platforms
Determine if employee or independent contractor	Classify workers – employee or independent contractor
Maintain records (income, expenses, etc.)	Maintain records (income, expenses, etc.)
	Report Payments to Workers
Timely file appropriate tax form(s) and pay taxes due	Timely file appropriate tax form(s) and pay taxes due

# Gig Economy – Compliance Efforts

- Analyzed tax compliance within the gig economy
- Strategizing on how to address potentially non-compliant gig workers
- Conducted outreach to educate gig economy workers on tax issues
- Redesigned a comprehensive Gig Economy Tax Center on the IRS website
- Updated Publication 5369, Gig Economy and Your Taxes: Things to Know



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# Nonfiler Strategy

## Nonfiler Strategy - Overview

- Implemented a coordinated enterprise approach
- Leverage technology and systems
- Identify the most effective and efficient treatment stream based on the level of compliance risk
- Focus on repeat nonfilers and data analytics that maximize dollars collected.



## Nonfiler Strategy - Workstreams

- State Audit Report Program
- Information Referrals (Internal and External)
- Repeat Nonfilers
- Network Nonfilers
- Virtual Currency
- Return Preparer Nonfilers
- Ghost Return Preparers
- Combined Annual Wage Reporting

# Emerging Issues

Virtual Currency

Micro Captive Insurance

Syndicated Conservation Easements

# Virtual Currency

- Virtual Currency - Digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value. (Notice 2014-21)
- Cryptocurrency - type of virtual currency that utilizes cryptography to validate and secure transactions that are digitally recorded on a distributed ledger, such as a blockchain.
- Use of virtual currency may have tax consequences that could result in tax liability.

## Virtual Currency

- Virtual currency compliance campaign announced
  - Educational letters
  - Audit treatment streams
- Revenue Ruling 2019-24 and Frequently Asked Questions
- Added virtual currency question to Schedule 1 of the Form 1040 for Tax Year 2019
- Virtual Currency Summit



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# Micro-Captive Insurance

## Micro-Captive Insurance Overview

- Captive Insurance
- Internal Revenue Code (IRC) section 831(b) election
- Protecting Americans from Tax Hikes (PATH) Act of 2015

# Micro-Captive Insurance Dirty Dozen List

- IRS Dirty Dozen List designation since 2015
- Sample of problems seen in some 831(b) transactions
  - Coverages insure implausible risks,
  - Failure to match genuine business needs or duplication of commercial coverage
  - Premium amounts unsupported by underwriting or actuarial analysis, geared to desired deduction amount, or significantly higher than for comparable commercial coverage
  - Vague, ambiguous, or deceptive policy terms or failure to meet industry or regulatory standards
  - Claims administration process insufficient or absent.

# Micro-Captive Insurance Dirty Dozen List

- IRS Dirty Dozen List designation since 2015
- Sample of problems seen in some 831(b) transactions
  - Insureds fail to file claims that are seemingly covered
  - Captives invest in illiquid or speculative assets, make loans or otherwise transfer capital to or for benefit of insured, captive's owners or other related persons or entities
  - Captives formed to advance inter-generational wealth transfer objectives and avoid estate and gift tax
  - Promoters, reinsurers and captive insurance managers may share common ownership interests that result in conflicts of interest



## Micro-Captive Insurance Notice 2016-66

- Notice 2016-66
  - Designated certain 831(b) captive insurance arrangements as Transaction of Interest

## Micro-Captive Insurance Court Decisions

- U.S. Tax Court decisions:
  - *Avrahami v. Commissioner*, 149 T.C. 144 (2017)
  - *Reserve Mechanical Corp f.k.a. Reserve Casualty Corp v. Commissioner*, T.C. Memo. 2018-86
  - *Syzygy Ins. Co. v. Commissioner*, T.C. Memo. 2019–34
- Two additional cases litigated in Tax Court – decisions pending

## Micro-Captive Insurance Curbing Abusive Arrangements

- IRS committed to curbing abusive arrangements through audits, investigations, and litigation
  - Income tax examinations of participants
  - Promoter investigations
  - More than 500 docketed cases in Tax Court
  - Designated as LB&I Campaign in 2017
  - Pursuit of injunctive relief

## Micro-Captive Insurance Private Resolution Initiative

- 2019/2020 Private Resolution Initiative
  - Eligible taxpayers notified by letter
  - Initiative follows three recent U.S. Tax Court decisions
  - IRS Exam issued private resolution offers to certain taxpayers under audit (w/o docketed years)
    - Nearly 80% of taxpayers accepted
  - IRS Counsel issued private resolution offers to certain taxpayers w. docketed years

## Micro-Captive Insurance Increased Enforcement Activity

- New Examination Teams
- New Promoter Investigations Coordinator
- Letter 6336
- Notice 2016-66 still in effect – disclosure requirement



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# Syndicated Conservation Easements

# What is a Conservation Easement?

- A legal agreement between a landowner and an IRC § 501(c)(3) charitable qualified land trust that places permanent restrictions on the use of land to prevent future development in perpetuity.
- A voluntary legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its conservation values.
- In perpetuity – All future landowners are bound by the terms of the conservation easement deed.
- May also involve an historical building (façade) or historical site.

# Tax and Conservation Easement

- IRC § 170(h) allows a charitable contribution of a qualified real property interest (i.e., a restriction granted in perpetuity on the use of the real property) to a qualified organization exclusively for conservation purposes.
- Deduction is the fair market value of the property.
- Several legal requirements that must be met.



# Overview of Conservation Purposes IRC §170(h)(4)(A)

- Preservation of land for outdoor recreation by, or for the education of, the general public. IRC §170(h)(4)(A)(i)
- Protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem. IRC §170(h)(4)(A)(ii)
- Preservation of open space for the scenic enjoyment of the general public or pursuant to a clearly delineated governmental conservation policy. Needs significant public benefit. IRC §170(h)(4)(A)(iii)
- Preservation of historically important land or a certified historic structure. IRC §170(h)(4)(iv)



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# What is a Syndicated Conservation Easement?

- Sponsors sell an ownership interest in a parcel of land, generally through a partnership or other flow-through entity, to a group of investors.
- Investors are typically presented options to hold the property, develop the property, or place a conservation easement on the property.

## Notice 2017-10 released 12/23/2016

- Designated specific syndicated conservation easement transactions as listed transactions and required disclosure statements by both investors and material advisors.
- Form 8886 (investors) and Form 8918 (material advisors) must be filed with Office of Tax Shelter Analysis (OTSA).
- Form 8886 attached to both the 1065 Partnership return and the 1040 investor return in the year of tax deduction.
- Disclosure filing requirement applies to transactions entered into on or after 1/1/2010 and statute of limitations has not expired as of 12/23/2016.
- Includes “substantially similar” transactions.

# IRS Response

- 2019 IRS Dirty Dozen list designation.
- Analysis of disclosures under Notice 2017-10 - Disclosure filing requirements are still in effect.
- LB&I campaign/SBSE Coordinated Issue Project
- November 12, 2019 – IRS increases enforcement action on syndicated conservation easement transactions.
- Income tax examinations, promoter investigations, appraiser penalties, disclosure non-filer penalty, and DOJ injunctions are being considered.

# Syndicated Conservation Easement Court Cases

- Hoffman Props. II, LP v. Comm'r, 2020 U.S. App. LEXIS 11730, 2020 FED App. 0113P (6th Cir. Apr. 14, 2020), affg. Tax Ct. Dkt. No. 14130-15.
- Coal Property Holdings, LLC v. Commissioner, 153 T.C. No. 7 (October 28, 2019)
- Oakhill Woods, LLC v. Comm'r, T.C. Memo. 2020-24, 2020 Tax Ct. Memo LEXIS 23.
- R.R. Holdings, L.L.C. v. Comm'r, T.C. Memo 2020-22, 2020 Tax Ct. Memo LEXIS 21.
- Carter v. Comm'r, T.C. Memo 2020-21, 2020 U.S. Tax Ct. LEXIS 7.
- Rock Creek Property Holdings, LLC v. Comm'r, Tax Ct. Dkt. No. 5599-17 (Feb. 10, 2020).
- TOT Property Holdings LLC v. Comm'r, Tax Ct. Dkt. No. 5600-17 (Dec. 13, 2019).

## IRS Commissioner

“We will not stop in our pursuit of everyone involved in the creation, marketing, promotion, and wrongful acquisition of artificial, highly inflated deductions based on these aggressive transactions. Every available enforcement option will be considered, including civil penalties and, where appropriate, criminal investigations that could lead to a criminal prosecution,” said IRS Commissioner Chuck Rettig.

# Objectives

- Can you?
  - Describe key Exam priorities
  - List new tax law legislation impacting Exam compliance activities
  - Define Virtual Currency
  - Discuss IRS enforcement activities with respect to micro-captive transactions
  - Describe a Syndicated Conservation Easement

# IRS Resources

- [www.irs.gov](http://www.irs.gov)
  - [Small Business Self Employed Tax Center](#)
  - [Coronavirus Tax Relief and Economic Impact Payments](#)
  - [Gig Economy Tax Center](#)
  - [Syndicated Conservation Easements](#)
  - [Abusive Tax Shelters and Transactions](#)
  - [Virtual Currencies](#)



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