

What Changed and What Didn't After the April 2026 Micro Captive Court Decision

A recent federal court decision has introduced meaningful changes to how micro captive insurance arrangements are treated for disclosure purposes. While the ruling eliminates one of the most burdensome classifications, it does not reduce the IRS's overall focus on these arrangements. Here's an overview of what has changed, what remains in place, and what businesses and advisors should be considering moving forward.



What Changed

Listed Transaction Status Has Been Eliminated

- The court vacated **26 C.F.R. § 1.6011-10**, which classified certain micro captives as **listed transactions**.
- As a result:
 - Micro captives are **no longer considered presumptively tax avoidant** solely by meeting fixed criteria (e.g., 30% loss ratio plus related party financing).
 - **Listed transaction penalties** (up to \$200,000 per failure to disclose) **do not apply**.
 - The vacatur takes effect **May 1, 2026** (temporary stay to avoid filing season confusion).

Penalty Exposure Is Reduced

- Taxpayers and advisors now face penalties applicable to transactions of interest, which are significantly lower and may be rescinded in certain circumstances.



What Did Not Change

Disclosure Is Still Required

- **26 C.F.R. § 1.6011-11 remains fully enforceable.**
- Most § 831(b) micro captives must still disclose as **transactions of interest** if they meet:
 - Common ownership/relationship criteria, and
 - Either:
 - Related party financing, **or**
 - A modified loss ratio below **60%**.
- Disclosure is made on **Form 8886** (and **Form 8918** for material advisors).

IRS Audit and Enforcement Risk Remains High

- The decision does **not** validate any micro captive arrangement.
- The IRS may still:
 - Challenge premium deductions,
 - Deny § 831(b) treatment,
 - Impose accuracy related penalties.

- Courts continue to analyze micro captives **case by case** based on whether the arrangement is “really insurance.”

Substance Over Form Continues to Control

- Key risk factors remain unchanged:
 - Premiums not supported by actuarial analysis,
 - Low or inconsistent claims activity,
 - Circular flows of funds back to the insured,
 - Lack of arm’s length negotiation or risk distribution.

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What This Means for You

For Existing Micro Captives

- Continue **full and timely disclosure** as a transaction of interest.
- Expect continued IRS scrutiny—even without listed transaction status.
- Documentation and economic substance remain critical.

For Businesses Considering a Micro Captive

- Continue **full and timely disclosure** as a transaction of interest.
- Expect continued IRS scrutiny—even without listed transaction status.
- Documentation and economic substance remain critical.

For Advisors

- Disclosure obligations remain.
- Marketing or structuring micro captives as “IRS approved” or low risk is not supported by the law.
- The IRS may attempt to re issue a narrower listed transaction rule in the future.



Key Takeaway

The decision lowers penalties but not scrutiny.

Micro captives are no longer branded as inherently abusive, but the IRS retains broad authority to demand disclosures and challenge arrangements that lack genuine insurance substance.

Reduced Penalties, Continued Scrutiny

While this decision may reduce certain penalty risks, it does not lessen the need for proper structuring, documentation, and compliance. Micro captive arrangements remain under significant scrutiny, and CRI can help you assess the impact on your organization. Contact your CRI advisor to discuss your situation and next steps.

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