

The logo for Captive Strategies features a large, stylized, light gray swoosh that curves from the top left towards the bottom right. The text "Captive Strategies" is written in a purple, serif font, with "Captive" on the top line and "Strategies" on the bottom line, positioned to the right of the swoosh.

# Captive Strategies

ICS ALTERNATIVE RISK FINANCING NEWSLETTER April 2008

## RISK MANAGEMENT FOCUS: Pre-Task Planning

In this edition of Captive Strategies, Curtis Williams, Risk Management Specialist at ICS, reminds us that simply being aware of the hazards that surround you may save your organization thousands of dollars. This awareness can be achieved by ongoing assessments throughout the workday. For example, have you ever walked into a convenience store with a wet floor? How about walking through a jobsite and noticing a nail protruding from a board? These ongoing assessments are valuable because they help identify hazards which may be reduced or eliminated. Pre-Task Planning will take an organization one step further, helping to prevent the hazard from occurring in the first place.

### What is Pre-Task Planning?

Pre-Task Planning simply means the identification of hazards and how to eliminate or avoid them in a project or worksite. Pre-Task Planning is accomplished in meetings with employees immediately prior to a task being performed and periodically until the task is completed. These meetings can be held by all levels of employees but are typically held by store managers, shift leaders or foreman.

Before any shift or task begins, supervisors and workers thoroughly discuss the safeguards and hazards involved. Some simple questions discussed are:

- What are the hazards around us?
- What could go wrong during the course of the day?
- What can we do to eliminate the hazards?

Employee involvement is the key to the success in this process. Hazards change throughout the course of a day or project and employees need to communicate a hazardous situation at any time. This will save money and build an ongoing safety culture within the organization.

Pre-Task Planning has proven to be effective if all employees and supervisors buy into the process. While there are different types of pre-task fundamentals, all are based on similar principles. Conducting an organized assessment of tasks being performed, deciding how the work will be completed, identifying the hazards encountered during the task, and formulating a plan to mitigate the hazard are all steps that will help to reduce accidents in the workplace.

## IN THE SPOTLIGHT: Accounting Developments?

On March 12, 2008, the International Center for Captive Insurance Education (ICCIE) held an on-line seminar attended by captive professionals from all major domiciles. The topic was "FIN 48 and Other Accounting Developments that may Impact your Captive's Financial Statements." Speakers were Daniel Kusaila, Senior Tax Manager, Glenn Saslow, Audit Partner of Saslow Lufkin and Buggy, LLP, and Kate Westover, Vice President of Alternative Risk Financing at Innovative Captive Strategies, Inc.

Financial Interpretation No. 48 is the Financial Accounting Standards Board's (FASB) latest pronouncement on the subject of accounting for income taxes. *Accounting for Uncertainty in Income Taxes (FIN 48)* was released in July 2006 and was effective for tax years beginning on or after December 15, 2006. Subsequent to the issuance of FIN 48, FASB issued FSP FIN 48-2 on February 1, 2008, deferring the effective date for all nonpublic entities to fiscal years beginning after December 15, 2007. However, FASB stated the deferral does not apply to non-public entities that are consolidated with a public entity. FIN 48 amends SFAS 5, which is no longer applicable to income taxes and is intended to provide an interpretation of FAS 109.



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Interpretations are issued if the FASB believes auditors have insufficient guidance on a particular topic leading to different ways of accounting for specific items. Unfortunately, as Mr. Kusaila pointed out, the impact of FIN 48 is to give more guidance, a roadmap of sorts, to the IRS as it requires a considerable amount of disclosures relating to actual or potential income tax risks. In other words, the auditors will tell the IRS exactly where and why to look when determining whether there is uncertainty surrounding the position taken by the tax payer (both the captive and captive's insureds).

How does an auditor determine if there is "tax risk" under the new standard? FIN 48 establishes it must be more-likely-than-not ("MLTN") that the tax position taken by the tax payer can be sustained. The "position" to be sustained is the amount of deduction taken (or to be taken), the amount of income excluded from taxable income, the decision to not file an income tax return (including state income taxes), and any decision to treat the entity or transaction as tax free.

What evidence will auditors be looking for to evaluate the MLTN positions captive owners and users wish to take? The FASB states those evaluating the positions taken have "full knowledge of all relevant information." This may include providing an auditor original feasibility studies dealing with issues surrounding the captive owner and their tax positions, plus any updates, tax opinions or articles deemed relevant to the decision.

Auditors must find a way to quantify a "FIN 48 Liability," i.e. capture the difference between the tax liability as filed and the liability to be recognized if the tax position is not supported. A FIN 48 liability would appear to be long term, meaning it remains on the captive or premium payer's books until settled. Further, it would be necessary to accrue interest on the difference between a FIN 48 tax liability and tax paid or accrued. The audited statements would identify all open tax years by jurisdiction, and provide qualitative and quantitative disclosure of tax benefits that could be subject to change. A road map indeed!

FIN 48 makes it clear that the evaluation must be based solely on the facts of each program structure. In other words, no future offsets or aggregation of positions will be possible, (as may have occurred previously), when a tax director took an aggressive position. Such an example would be excise tax payments, thinking it would be a useful position to negotiate away in an audit.

## **TAX UPDATE: The IRS Listens**

In the last edition of Captive Strategies, ICS reported the IRS had introduced a regulation proposing to eliminate the deduction for premium paid to single parent captives if the premium payer was in the same consolidated tax return as the captive. Thanks to a vigorous lobbying effort by a coalition of captive trade associations, the proposal has been withdrawn.

The IRS does remain active issuing Revenue Rulings (RR) that impact captives. RR 2008-15 re-asserts their position that excise tax is payable on retrocession premiums (premium reinsured from a reinsurance company). This is known as the "cascade" theory, and even the IRS admits it may be hard for them to track. Nonetheless, it asserts excise tax must be paid on retrocessions.

The IRS has also issued another notice asking for tax payer comments on how rental captives should be treated for tax purposes. This is the second request for tax payer input on rental captives, and indicates the IRS is focused on this type of captive.

## **ICS NEWS:**

### **BERMUDA CAPTIVE HEALTH CARE CONFERENCE**

On June 17, 2008, Tom Stewart will be speaking at the Bermuda Captive Health Care conference on the topic "Captive Funding – How do We Know If We Have Enough?" He will be joined by Leigh Collier, Vice President Risk Management at the Baptist Health System, Inc. in Birmingham, Alabama. Baptist Health owns a captive managed by ICS in Barbados. For more information about the conference, watch the ASHRM web site at [www.ashrm.org](http://www.ashrm.org).

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## 2008 CAPTIVE OWNERS' CONFERENCE

The 9th Annual Captive Owners' Conference will be at the InterContinental Chicago, September 25 – 26, 2008. Please visit the ICS web site to register at [www.yourcaptive.com/COC](http://www.yourcaptive.com/COC)



## NEW EMPLOYEES

ICS would like to welcome Nick Blyth who joined ICS in March as an Account Executive in the Des Moines Office and Tyler Stenseng who also joined the Des Moines office in March as a Financial Analyst.



**Nick Blyth**



**Tyler Stenseng**

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