



# TaxNewsFlash

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## U.S. Supreme Court: Anti-Injunction Act does not bar suit challenging IRS notice requiring information reporting

The U.S. Supreme Court today issued an opinion reversing and remanding to the Sixth Circuit a case concerning a challenge to Notice 2016-66 requiring taxpayers and “material advisors” to report information about certain insurance agreements (“micro-captive transactions”) to the IRS.

The case is: *CIC Services, LLC v. IRS*, No. 19-930 (S. Ct. May 17, 2021).

Read the Supreme Court’s [opinion](#) [PDF 158 KB] written by Justice Kagan with concurring opinions from Justice Sotomayor and Justice Kavanaugh.

### Summary

The IRS issued Notice 2016-66 identifying certain micro-captive agreements as reportable transactions, and requiring taxpayers and material advisors associated with such agreements to (among other things) “describe the transaction in sufficient detail for the IRS to be able to understand [its] tax structure.”

Noncompliance with Notice 2016-66 subjects a taxpayer or material advisor to civil tax penalties, among other sanctions.

The plaintiff (a tax adviser) filed a complaint challenging Notice 2016-66 as invalid under the Administrative Procedure Act and requested a federal district court to grant injunctive relief setting the notice aside. The district court dismissed the action as being barred by the “Anti-Injunction Act” (Code section 7421(a)—that generally requires those contesting a tax’s validity to pay the tax prior to filing a legal challenge). A divided panel of the Sixth Circuit affirmed.

The Supreme Court today reversed and remanded the case to the Sixth Circuit, holding that the Anti-Injunction Act does not bar a suit seeking to set aside an information-reporting requirement that is backed by both civil tax penalties and criminal penalties.

Specifically, the Court held that a suit to enjoin a requirement to report information is not an action to restrain the “assessment or collection” of a tax, even if the information will help the IRS collect future tax revenue. As observed, the presence of a penalty for noncompliance somewhat complicated matters, but it does not ultimately change the answer under the statute.

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