NOVEMBER 2011

TAX TOPICS

INSURANCE TAX

Texas Comptroller of Public Accounts

Guidelines for Premium Tax Compliance with the Nonadmitted and Reinsurance Reform Act

Congress passed the Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The NRRA makes changes to regulation and taxation of nonadmitted insurance nationwide.

General Guidelines

- The provisions of the NRRA are effective July 21, 2011.
- The placement of nonadmitted insurance is solely subject to the statutory and regulatory requirements of the insured's home state.
- Nonadmitted insurance includes both surplus lines and independently procured insurance but does not include unauthorized insurance transactions by a non-licensed insurer that may be subject to regulatory actions and taxation by a state.
- New and renewal policies and any modifications made with an effective date prior to July 21, 2011, remain subject to the laws and regulations of each state as of the policy effective date.
- New and renewal policies and any modifications made with an effective date on or after July 21, 2011, are only subject to the laws and regulations of the home state of the insured.
- The NRRA provisions should be applied to multi-year and continuous-until-cancelled policies on the policy's first anniversary date on or after July 21, 2011.
- Only the home state of an insured can require premium tax on a multi-state policy; however, states may join an agreement or compact to allocate the taxes among the various states afforded coverage under the policy.

Other Information

- Texas Insurance Code, Chapter 229, gives the Comptroller the authority to join in a tax compact or other agreement. If the Comptroller decides to join in such an agreement, the industry will be notified in order to prepare for any necessary reporting and filing changes.
- The NRRA does not preempt any state law, rule or regulation that applies to the placement of workers' compensation or excess insurance for self-funded workers' compensation plans.

Key Definitions in the NRRA for Tax Purposes

AFFILIATE:

The term "affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

AFFILIATED GROUP:

The term "affiliated group" means any group of entities that are all affiliated.

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GUIDELINES FOR PREMIUM TAX COMPLIANCE

CONTROL:

An entity has "control" over another entity if:

(A) The entity directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or

(B) The entity controls in any manner the election of a majority of the directors or trustees of the other entity.

HOME STATE:

Home state includes:

(1) If the insured is a business, the state in which the insured maintains its principal place of business.

(2) If the insured is an individual, the state in which the insured maintains its principal residence.

(3) If 100 percent of the insured risk is located outside of the state identified in (1) or (2) above, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(4) If more than one insured from an affiliated group are named insureds on a single policy, the state of the member of the group that has the largest percentage of premium attributed to it under such insurance contract.

INDEPENDENTLY PROCURED:

Insurance procured directly by an insured from a nonadmitted insurer.

NONADMITTED INSURANCE:

Any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.

NONADMITTED INSURER:

An insurer not licensed to engage in the business of insurance in a state, but excluding a risk retention group as that term is defined in Section 2(a)(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. 3901(a)(4)).

PREMIUM TAX:

With respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees and any other compensation given in consideration for a contract of insurance.

Agent Filing Requirements

- At this time, Texas has not entered into an agreement or compact with other states to allocate taxes. Therefore, when Texas is the home state of the insured, agents should file policy information with the Surplus Lines Stamping Office of Texas that reflects 100 percent of the policy premium as Texas premium. In addition, for information purposes only, the portion of the premium that applies to risks in other states should be reported under the category of "Breakdown of States Summary." The 4.85 percent tax will be computed on the Texas premium shown or 100 percent of the policy premium. The tax will not be assessed again on the premium reported under the "Breakdown of States Summary" that has already been included in the Texas premium amount. If the insured's "principal place of business" or principal residence is Texas, but 100 percent of the risk is located outside Texas, then the home state is not Texas. The state with the largest percentage of taxable premium under the policy becomes the home state. The policy would then be reported to that state and no reporting to Texas is required.

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- A policy that Texas previously viewed as "independently procured" where all negotiation for the coverage took place outside the state, but for which an agent is involved in the placement of the policy, is now considered a surplus lines transaction. As such, the surplus lines agent placing the coverage must report and pay taxes to the home state of the insured.
- Under the NRRA, "independently procured" insurance involves a policy that an insured purchases directly from a surplus lines insurer without using an agent. The same home state provisions apply to such placements and the policyholder is responsible for reporting and remitting the taxes on the premium to the home state of the insured. If Texas is the home state, the policyholder of independently procured insurance is responsible for reporting and remitting tax on 100 percent of the premium to Texas. The independently procured forms are being modified to reflect this change for policies that are effective on or after July 21, 2011.

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Publication #94-431 · November 2011