

Illinois – Proposed tax on self-procured insurance could apply to captive insurance transactions

July 8, 2014

UPDATE: S.B. 3324 was signed by the governor on August 15, 2014.

In brief

Illinois [S.B. 3324](#) proposes a self-procurement tax on insurance premiums paid to unauthorized insurers. The tax is imposed on the *insured*, not the insurance company. The potential exists for this tax to extend to Illinois headquartered companies that insure risks through a captive insurance company.

The bill passed the legislature on May 21, 2014, and was presented to the governor on June 19, 2014. The governor has 60 days after the bill is presented to sign or veto the bill, otherwise the bill becomes law without his signature.

In detail

Illinois insurance premium tax

Under current law, insurance transactions involving Illinois risks are taxed under the following methods:

- Insurance procured through an authorized insurer (i.e., an insurance company holding a certificate of authority to conduct business in the state by the Illinois Department of Insurance) is taxed to the insurer at a base rate of 0.5% of premium (0.4% for Accident and Health premium) plus applicable retaliatory tax for

insurers domiciled outside of Illinois.

- Insurance procured through a surplus lines broker is taxed to the broker at a base rate of 3.5% of premium plus 1% on the applicable portion of premium covering fire risks plus a stamping fee of 0.1% of premium.
- Insurance procured directly from an unauthorized insurer (i.e., an insurance company not domestic to nor licensed to conduct business by Illinois) is not taxed by Illinois so long as the insured:

1. employs or retains a qualified risk manager to negotiate the coverage;
2. purchased aggregate commercial property-casualty coverage in excess of \$100,000 in the prior year; and
3. has a net worth over \$20 million; has revenues over \$50 million, employs over 500 employees, is a not-for-profit organization, or is a municipality with over 50,000 residents.

Proposed self-procurement tax

Effective January 1, 2015, S.B. 3324 proposes a tax equal to the tax on surplus lines brokers (up to 4.6% as described above) to be imposed on contracts of insurance independently procured directly from an ***unauthorized insurer*** by ***industrial insureds***.

Under S.B. 3324, the definition of an industrial insured means an insured that:

- procures the insurance of Class 2 (casualty, fidelity, and surety) or Class 3 (fire and marine) risks by use of the services of a full-time employee who is a qualified risk manager;

- procures the insurance directly from an unauthorized insurer without the services of an intermediary insurance producer; and
- is an exempt commercial purchaser whose home state (generally the principal place of business) is Illinois.

The takeaway

Consequences for Illinois home state companies with captive insurance companies

Under current law, insurance premium paid to a captive insurance company are generally not subject to insurance premium-based tax in

Illinois, as these transactions typically meet the requirements for an exempt purchase.

Under S.B. 3324, the potential exists for Illinois home state companies insuring risks through unauthorized “captive” insurers (that are not registered with the Department of Insurance) to be subject to this new tax. Such companies would also be subject to reporting responsibilities to the Surplus Line Association of Illinois.

It is our understanding that efforts are now under way to address the potential impact S.B. 3324 may have on captive insurance transactions.

Let's talk

If you have any questions regarding this proposed tax on Illinois insurance premium, please contact:

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