

Premium Tax – Arizona Passes Reciprocal Non-Retaliation Law and Lowers Rate

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Overview

Arizona Governor Doug Ducey recently signed into law House Bill 2440 (“H.B. 2440”).¹ The new law, effective from and after December 31, 2015, essentially allows Arizona to become a “Reciprocal Non-Retaliation” state – *i.e.*, a state that does not impose a retaliatory tax on insurance companies domiciled in another state if the other state agrees not to retaliate against the state’s own insurance companies – similar to Massachusetts, Minnesota, New York, and Rhode Island.

Arizona Governor Ducey also signed into law House Bill 2568 (“H.B. 2568”).² This new law gradually phases in a reduction in the Arizona general premium tax rate from 2% to 1.7% by 2026.

In this Tax Alert we summarize Arizona’s retaliatory tax provisions and the effects of H.B. 2440 and H.B. 2568.

Arizona Retaliatory Tax

The Arizona Insurance Code requires foreign insurance companies to pay a retaliatory tax.³ Generally, this tax is based on a comparison of the burdens imposed by Arizona and the hypothetical burdens that would be imposed on the foreign insurance company’s Arizona activities by the state where the insurance company is domiciled.⁴ The Arizona burdens are calculated based on “the total amount of taxes (net of credits), fees, assessments and other obligations that Arizona levied on [the foreign insurance company],” and the state of domicile burdens are calculated based on “the total amount of taxes (net of credits), fees, assessments and other obligations that [the foreign insurance company’s] domicile would have levied on an Arizona insurer based on the business [it] transacted in Arizona.”⁵

Reciprocal Non-Retaliation States

For more than 20 years, Massachusetts, Minnesota, New York, and Rhode Island have been the only four “Reciprocal Non-Retaliation” states.⁶ These four states have similar legislative language providing that their own respective retaliatory tax provisions do not apply to an insurer domiciled in another state that exempts insurers from their own state from retaliatory taxation. Accordingly, an insurance company domiciled in any one of these four states currently is not required to calculate or pay retaliatory taxes in the other three states.

H.B. 2440

H.B. 2440 provides that Arizona’s retaliatory tax provisions do not apply to an insurer domiciled in a state or foreign country that does not impose a retaliatory tax or that exempts companies domiciled in Arizona from retaliatory tax on a reciprocal basis. Note that the language of H.B. 2440 closely matches the reciprocal non-retaliation language enacted in the other Reciprocal Non-Retaliation states.

H.B. 2568

H.B. 2568 provides for a phased in reduction of Arizona’s general premium tax rate to 1.7% over the next ten years. The general tax rate reduction does not apply to fire insurance premiums, disability insurance premiums, or to health care service plans. More specifically, Arizona’s general premium tax rate will be reduced to 1.99% in 2016, 1.98% in 2017, and then lowered by 0.03 percentage points for each year after 2017 through 2025, before finally settling at 1.7% for 2026 and subsequent years.

¹ Laws 2015, Ch. 184, 1st Regular Session.

² Laws 2015, Ch. 220, 1st Regular Session.

³ Ariz. Rev. Stat. § 20-230.

⁴ *Arizona Retaliation Guide for 2010-2014*, Arizona Department of Insurance (Jan. 1, 2015).

⁵ *Id.*

⁶ Massachusetts legislation to become a Reciprocal Non-Retaliation state dates back to 1971. New York’s status as a Reciprocal Non-Retaliation state dates back to at least 1984 when its insurance code was re-enacted and its statutory cites were updated. Minnesota enacted legislation to become a Reciprocal Non-Retaliation state in 1989. Rhode Island enacted Reciprocal Non-Retaliation legislation in 1994.

In addition, H.B. 2568 sets the percentage of various lines of insurance that are taxed as fire insurance for premium tax purposes.⁷

Considerations

Once H.B. 2440 becomes effective from and after December 31, 2015, insurance companies domiciled in Massachusetts, Minnesota, New York, and Rhode Island will no longer need to calculate or pay retaliatory taxes in Arizona. In addition, insurance companies domiciled in Arizona will no longer need to calculate or pay retaliatory taxes in Massachusetts, Minnesota, New York, and Rhode Island. As such, H.B. 2440 not only impacts Arizona-domiciled companies but may also have a significant impact for insurance companies domiciled in Massachusetts, Minnesota, New York, or Rhode Island that typically owe retaliatory taxes in Arizona.

For example, H.B. 2440 may benefit a New York domiciled life insurance company subject to Arizona's retaliatory tax provisions that calculates its New York franchise tax at the 2% premium ceiling and then includes the additional local and regional New York tax. Similarly, H.B. 2440 may benefit a Massachusetts domiciled insurance company subject to Arizona's retaliatory tax provisions that includes the operations assessment and the producer appointment fees in its Massachusetts retaliatory tax calculation.

In addition, H.B. 2440 may benefit insurance companies domiciled in Massachusetts, Minnesota, New York, or Rhode Island that would otherwise owe additional retaliatory tax in Arizona after the phased in tax rate reduction in H.B. 2568.

Contacts

If you have questions regarding H.B. 2440, H.B. 2568 or pertaining to other premium tax or retaliatory tax matters in Arizona, please contact any of the following Deloitte Tax professionals.

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⁷ However, H.B. 2568 provides a different definition of fire premiums for purposes of the surplus lines tax imposed under Ariz. Rev. Stat. §20-416.