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Memo

To: Marsh Captive Management Clients

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From: Michael Serricchio, Norwalk, CT, Captive Advisory
Catherine Dorrien, Atlanta, GA, Captive Advisory

Subject: The Potential Impact of the Dodd-Frank Wall Street Reform and Consumer Protection Act on State Premium Tax for Captive Insureds

There are certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), that was signed into law on July 21, 2010 that will effect certain captive insureds. Specifically, the Act may potentially affect state premium tax obligations resulting from premium payments made to a captive insurer for US risks.

What Is Self Procurement Tax

Approximately two thirds of the US States ("States") impose a premium tax known as "self procurement tax" or "direct placement tax" on the purchaser of insurance procured directly from a non-admitted insurer (which may include a captive insurance company outside its state of domicile). Prior to the Act, the responsibility for the assessment and collection of the premium tax was limited to the various States in which an insured was determined to have risk. It is assumed that the intent of the Act was not to target self procurement taxes or captive arrangements but rather an attempt to streamline the administration across all states on state premium tax for surplus lines placements.

The Impact of The US Dodd-Frank Wall Street Reform and Consumer Protection Act

With the passage of the Act, no State other than the home State of the insurance buyer (defined as where the buyer maintains its' principal place of business) may require any premium tax (or self procurement tax) for non-admitted insurance. The home state will be the collection point for 100% of the non-admitted premium tax obligation.

The Act (which goes into effect July 2011 and does not apply to Risk Retention Groups) does not provide specific uniform procedures to the states that provide for reporting, payment, collection, and allocation of premium taxes for non-admitted insurance. Rather, the Act states it is the intent of Congress that each State adopt nationwide uniform requirements established with an interstate compact. Discussions have started with the NAIC, and it is anticipated that the NAIC will establish a multi-state compact for the distribution of tax revenue from the placement of non-admitted lines. It is not known at the moment though how long it will take to implement such a multi-state compact.

Conclusion:

Presently, the Act is unclear as to how procedures will be defined for the calculation of the self procurement taxes due in the insurance buyer's home State. Marsh will keep you apprised on developments by the NAIC under the Act to set such procedures and the potential impact to captive insureds.

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