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Unfinished Business: Illinois General Assembly Fails to Repeal Self-Procured Insurance Tax

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Despite a strong effort by a coalition of opponents, efforts to repeal the new Illinois self-procured insurance tax law in the veto session of the Illinois General Assembly were unsuccessful. As a result, the law will take effect on January 1, 2015.

As previously covered on this blog, Illinois allows “industrial insureds” to independently procure insurance. Prior to the enactment of the self-procured insurance tax law, Illinois had not imposed tax on these transactions. At the end of the spring legislative session, supposedly technical amendments to the insurance code were passed that imposed a 3.5 percent premium tax on these policies (plus an additional fire marshal tax and surplus line association fee, bringing the total to between 3.6 percent and 4.6 percent depending on the type of insurance). This tax is imposed on the nationwide premium if the insured’s home state is Illinois. Effectively, the statute is a tax on Illinois-headquartered businesses that use captive insurance risk management arrangements.

Despite being alerted to the unfriendly business impact of the bill, Governor Quinn signed it into law with an effective date of January 1, 2015. Since then, the Illinois business community has sought the repeal of the tax or its amendment to exempt captives. There had been hope that this could be achieved after the November election during the veto session or a lame duck session. The Illinois House of Representatives, however, has adjourned and does not plan to reconvene until the 99thGeneral Assembly is inaugurated on January 14, 2015. (The Senate also has adjourned, although the Senate President has left open the possibility of reconvening before inauguration.) Going into the 99thGeneral Assembly, efforts will continue to seek legislative relief for captive insurance arrangements.

The new tax applies to policies of insurance effective on or after January 1, 2015. Within 90 days after the effective date of such a policy, qualifying insureds must file a report with the Surplus Lines Association of Illinois (similar to that required of a surplus lines broker). Within 30 days of filing that report, the insured then must pay to the Department of Insurance the premium tax and, if applicable, the fire marshal tax. Also within those 30 days the insured must pay the 0.1 percent surplus lines association fee to the Surplus Line Association of Illinois. Neither the Department of Insurance nor the Surplus Line Association of Illinois has posted forms or guidance on their websites. Indeed, the guidance on the Surplus Line Association website is outdated and does not reflect the 2014 amendments.

Affected taxpayers should carefully consider their compliance obligations and how to proceed amidst this uncertainty. We will post on this subject again when/if additional guidelines are issued.

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