

Risk Retention Groups - Article 33

Chapter 109 of the Laws of 1988 amended Article 33 of the Tax Law to subject risk retention groups to tax under this Article. Section 9 of Chapter 109 amended section 1500(a) of Article 33 to include risk retention groups, as defined in section 5902(o) of the Insurance Law, in the definition of insurance corporations. Section 10 of Chapter 109 amended section 1510(a) to impose the tax on premiums on risk retention groups defined in section 5902(o) of the Insurance Law. This law provides that risk retention groups will pay tax under Article 33 to insure equal treatment of all insurers doing business in New York State.

This law shall take effect on December 10, 1988. Thus, risk retention groups that file on a calendar year basis for Federal purposes will first become subject to tax for the short period beginning 12/10/88 and ending 12/31/88 and risk retention groups that file on a fiscal year basis for Federal purposes will first be subject to tax for the short period beginning 12/10/88 and ending on the last day of the fiscal period.

Risk retention groups were first established by Federal legislation in 1981 to facilitate the ability of product sellers to participate in product liability insurance coverage on a group basis. In 1986, the 1981 federal act was amended and the types of risks that such groups may insure was expanded to include most types of commercial insurance. Section 5902(o) of the Insurance Law defines a risk retention group as any corporation or other limited liability association:

(1) whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(2) which is organized for the primary purpose of assuming and spreading all, or any portion, of the liability exposure of its group members;

(3) which is chartered and licensed as a liability insurance company and is authorized to engage in the business of insurance under the laws of any state or, before 1/1/85, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and had certified to the insurance commissioner of at least 1 state that it satisfied the capitalization requirements of such state and had engaged in business continuously since such date only for the purpose of continuing to provide insurance to cover product liability or completed operations liability;

(4) which does not exclude any person from membership in the group solely to provide members of such group a competitive advantage over such person;

(5) which has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group or has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and which organization has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by the risk retention group;

(6) whose members are engaged in business or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business trade, product, services, premises or operations;

(7) whose activities do not include the provision of insurance other than liability insurance for assuming and spreading all or any portion of the liability of its group members and reinsurance with respect to the liability of any other risk retention group (or any member of such risk retention group) which is engaged in businesses or activities which meet the requirement described in (6) above, for membership in the risk retention group which provides such reinsurance; and

(8) the name includes the phrase "risk retention group".