



Changes to Article 33-A, *Tax on Independently Procured Insurance*

To conform to federal legislation, New York State enacted legislation that changed the method of taxation for insurance contracts purchased or renewed from unauthorized insurers when those contracts are not purchased or renewed through a New York licensed excess line broker. The change applies to taxable insurance contracts with effective dates on or after July 21, 2011.

Background

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, which included, as Subtitle B, the Nonadmitted and Reinsurance Reform Act of 2010 (NRA), required states to change their current taxation methods for insurance purchased or renewed independently from insurers not authorized to transact business in their states. The federal legislation gives the *home state* of an insured the sole authority to regulate and collect taxes on these transactions. To conform to the federal requirements, New York passed Part I of Chapter 61 of the Laws of 2011.

Prior to this legislation, the tax under Article 33-A was based on premiums for risks located or resident in New York State, irrespective of the location of the insured. In cases where premiums were paid for risks that were both within and without New York State, taxpayers were required to allocate the premiums and pay tax on the amount of premiums allocated to New York State.

Imposition of tax

Chapter 61 amended Article 33-A to impose tax on any *person* whose *home state* is New York and who purchases or renews a *taxable insurance contract* from an insurer not authorized to transact business in New York under a certificate of authority from the Superintendent of Insurance, when the contract is not purchased or renewed through a New York licensed excess line broker. See the definition of *taxable insurance contract* for the kinds of insurance subject to Article 33-A.

The tax is calculated on premiums paid or payable, less returns, for these contracts. Premiums subject to the tax will include 100% of premiums paid or payable to unauthorized insurers when the home state of the insured is New York. The rate of tax continues to be 3.6%. The amendments apply to taxable insurance contracts with effective dates on or after July 21, 2011.

Changes in definition of taxable insurance contract

Chapter 61 amended the definition of *taxable insurance contract* by linking it to the kinds of insurance described in Insurance Law section 2105(a). As a result, prize indemnification, service contract reimbursement, and salary protection insurance are now subject to tax. For more kinds of insurance that are included, see the definition section below.

Note that Insurance Law section 2105(a) specifically states that it does not include ocean marine insurance, and other contracts of insurance enumerated in Insurance Law sections 2117(b) and 2117(c). Thus, these kinds of insurance are not subject to tax.

Filing returns

Use Form CT-33-D, *Tax on Premiums Paid or Payable To an Unauthorized Insurer, For Taxable Insurance Contracts with an Effective Date on or after July 21, 2011*, to pay the tax on taxable insurance contracts with effective dates on or after July 21, 2011.

Use Form CT-33-D, *Tax on Premiums Paid or Payable To an Unauthorized Insurer, For Taxable Insurance Contracts with an Effective Date before July 21, 2011*, to pay the tax on taxable insurance contracts with effective dates before July 21, 2011.

These forms are available on our Web site, www.tax.ny.gov.

Definitions

The term *home state* means:

- the state in which an insured maintains its *principal place of business*; or
- in the case of an individual, the state where the individual maintains his or her *principal residence*.

If 100% of the insured risk is located outside of the state otherwise determined as above, the home state is the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

If more than one insured from an affiliated group, as *affiliated group* is defined in Insurance Law section 2101, are named insureds on a single insurance contract, the home state is the state where the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract maintains its principal place of business.

In the case of a group policy, if the group policyholder pays 100% of the premium from its own funds, then the home state for purposes of that policy is the home state, as determined

under either of the bulleted items above, of the group policyholder. When the group policyholder does not pay 100% of the premium from its own funds, the home state for purposes of that policy is the home state, as determined under either of the bulleted items above, of the group member.

The term *person* means an individual, corporation, partnership, limited liability company, society, association, joint-stock company, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary capacity, whether appointed by a court or otherwise, and any combination of the foregoing.

The term *principal place of business* means, with respect to determining the *home state* of the insured:

- the state where the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities; or
- if the insured's high-level officers direct, control, and coordinate the business activities in more than one state, or if the insured's principal place of business is located outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

The term *principal residence* means, with respect to determining the *home state* of the insured:

- the state where the insured resides for the greatest number of days during a calendar year; or
- if the insured's principal residence is located outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

The term *state*, as used in Article 21 of the Insurance Law, means the District of Columbia or any state or territory of the United States.

The term *taxable insurance contract* means a contract of insurance of the kind described in Insurance Law section 2105(a). Examples include: fire, miscellaneous property, water damage, burglary and theft, glass, boiler and machinery, elevator, animal, collision, personal injury liability, property damage liability, fidelity and surety, credit, motor vehicle and aircraft physical damage, marine and inland marine, residual value insurance, prize indemnification, service contract reimbursement, and salary protection insurance.

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