

Resolution in Support of Establishing National Standards and Procedures for the Reporting and Payment of Premium Taxes Due as a Result of Direct Procurement Interstate Insurance Transactions

**Sponsor TBD - To be ~~introduced for~~ discussed and considered during the Financial Services & Multi-Lines Issues Committee on November 17 ~~July 20~~, 2023.*

WHEREAS, the Nonadmitted and Reinsurance Reform Act (“NRRA”), which came into effect July 21, 2011, establishes that only an insured’s home state is permitted to collect premium taxes due as a result of payments made to an insurance carrier for a policy issued outside of said insured’s home state, unless 100% of the risk covered by the said policy is also located outside of the insured’s home state;

WHEREAS, despite provisions of NRRA which called upon the states to create national standards and procedures for reporting and collection of premium taxes due as a result of interstate insurance transactions, ~~and two major efforts, the Nonadmitted Insurance Multi-State Agreement (“NIMA”) and the Surplus Lines Insurance Multi-State Compliance Compact (“SLIMPACT”), by groups of states to achieve such a result,~~ no national standards or procedures, other than the general guidelines set forth in NRRA have yet been established;

WHEREAS, one of the lawful methods of obtaining insurance from a carrier located outside of an insured’s state of domicile is known variously as Direct, Independent, or Foreign Procurement (“Foreign” in this case referencing outside of the insured’s state of domicile, but within the United States);

WHEREAS, when an insurance policy is obtained through Direct Procurement, it is the obligation of the insured (and not carriers, brokers, or other intermediaries) to report and pay premium taxes due to the insured’s home state;

WHEREAS, although some states have established and published clear and efficient procedures for the reporting and payment of premium taxes for Directly Procured policies, others have not, resulting in confusion, under-reporting, and underpayment;

WHEREAS, ~~the lack of national standards and reporting and enforcement mechanisms has resulted in an ongoing loss of tax revenue to the states, the size of which is currently unknown but is at minimum in the hundreds of millions of dollars[‡];~~

WHEREAS, ~~continued~~ shortfalls by the states in the identification and collection of premium taxes due as a consequence of directly procured insurance policies results in lost revenue to the states, and could also ~~interstate insurance transactions may result in further federal intervention, a result that would be counter to NCOIL’s charter and purpose;~~

[‡]As an example, one state recently conducted an investigation and found that its five largest corporations all owed unreported premium taxes for policies obtained from carriers in other jurisdictions.

~~WHEREAS, while the preservation and reinforcement of the primacy of each state in overseeing insurance activities within its borders is a cornerstone of NCOIL’s mission, NCOIL’s members recognize that certain market conditions and critical needs of their citizens may be met in a timely fashion only through the acquisition by its residents and corporate entities of insurance products from carriers in other jurisdictions;~~

~~WHEREAS, as evidence of the demand for additional insurance capacity and flexibility, a bill known as the “Self Insurance Protection Act” was introduced in the U.S. House of Representatives on April 23, 2023²;~~

~~WHEREAS, if enacted, the effect of the Self Insurance Protection Act as presently drafted would be to broaden ERISA pre-emption to include stop-loss insurance coverage for self-insured group health plans, and thus remove all state jurisdiction over said coverage, and also to eliminate taxation on premiums for such coverage, both of which outcomes would be highly detrimental to state insurance regulation and antithetical to NCOIL’s core mission;~~

~~WHEREAS, inasmuch as the discouragement of lawful and compliant interstate insurance transactions, whether through active opposition or through lack of clarity in compliance, reporting, and tax remittance procedures, may be used by proponents of initiatives such as the Self Insurance Protection Act as evidence in support of the need for such radical and unwanted changes;~~

~~WHEREAS, companies—whether they are true carriers or “captives” behaving as *de facto* carriers—which fill such unmet insurance needs should in all cases be required to report and remit (or cause to be remitted) all premium taxes due to each state in which an insured is domiciled, as required under NRRRA;~~

~~WHEREAS, such tax reporting and remittance obligations should apply uniformly, whether a policy is obtained from a registered Excess and Surplus Lines carrier; from a Non-admitted carrier through the compliant use of Independent (also known as Direct) Procurement; or from a “captive” insuring individuals or companies domiciled in other jurisdictions;~~

~~WHEREAS, in *State Board of Ins. v. Todd Shipyards Corp.* (370 U.S. 451) (1962), the U. S. Supreme Court upheld the Constitutional right of individuals and companies to obtain insurance from carriers outside of their states of domicile;~~

WHEREAS, NOW, THEREFORE, BE IT RESOLVED that NCOIL urges each of the states and U. S. territories, as well as the District of Columbia, to work cooperatively to accomplish the following:

- Establish and publish clear guidelines for the reporting and remittance of premium taxes due as a result of direct procurement in each state;

² 118th Congress, 1st Session, H. R. 2813

- Make clear distinctions between the various types of interstate insurance transactions, including Excess and Surplus Lines; ~~direct~~Independent Procurement, and captive insurers, and clarify that the intent of any new legislation and/or regulation is to impact direct procurement only, and not any other type of insurance establishing and publishing procedures for the reporting and remitting of premium taxes for each type;
- ~~Formally recognize the rights and responsibilities established in the various codes and judicial decisions referenced above, and specify state expectations for demonstration of compliance with same;~~
- ~~Require each insurance company or other risk bearer licensed in any jurisdiction to report annually (or more frequently) to its licensing agency any premium taxes that are due to other states, irrespective of whether or not the insurer must report and pay said taxes directly ;~~
- ~~Take measures enact legislation and/or regulations to permit insureds who are directly responsible for reporting and remittance of premium taxes for policies acquired through Independent direct Procurement to assign said functions to issuing carriers, and/or to third parties such as third party administrators or accounting firms, while cautioning that such assignment will not relieve insureds of their legal responsibilities to report and remit premium taxes;~~
- ~~Encourage each state and territory to enact laws and/or regulations which give insurance carriers the right to report premium tax obligations to the states in which they are due, and shield carriers against any claims and/or legal action taken against them by insureds as a consequence of such reporting;~~
- Take all steps necessary to ensure compliance.

BE IT FINALLY RESOLVED, that a copy of this resolution shall be sent to legislative leaders in each of the states and territories; the chairpersons of the Insurance and Revenue Committees (or equivalent) of each state legislative body; the Treasurer (or equivalent) of each state and state and territory; the Department of Insurance (or equivalent) in each state and territory; the National Association of Insurance Commissioners (NAIC); and all other parties who may have an interest in the lawful reporting and collection of premium taxes.