
MEMORANDUM

TO: HOUSE COMMITTEE ON COMMERCE AND ECONOMIC DEVELOPMENT
FROM: DAVID PROVOST, DEPUTY COMMISSIONER, DEPARTMENT OF FINANCIAL
REGULATION
SUBJECT: CAPTIVE BILL
DATE: JANUARY 22, 2018
CC: COMMISSIONER PIECIAK
RICHARD SMITH, VCIA
IAN DAVIS, DIRECTOR OF FINANCIAL SERVICES, ACCD

Following is an outline of proposed changes to Vermont's captive statute:

*****Captive Insurance Company Licensing*****

Sec. 1. – Licensing authority

Background: The captive law refers to 8 VSA 3301(a)(3) for some definitions of insurance. In 2015, subdivision (a)(3)(J-R) was relettered to I-Q. The original had skipped "I".

Proposal: Amend statute to correct reference to current 3301(a)(3).

***** Captive Insurance Company Reports and Statements*****

Sec. 2. – Annual Statement due date

Background: Originally, all captives were required to file their annual reports on March 1. A few years ago, we gave most of our captives a little more time to prepare statements, intending that risk retention groups and Special Purpose Financial Captives continue the traditional schedule, since they report to other states. We also had a mismatch in the law whereby some captives that filed on a calendar-year basis had until March 1 (60 days) to file their statement, while the same type of company would have 75 days if they filed on a fiscal year basis. All captives that report only to Vermont should be able to file on March 15, or 75 days after year-end for fiscal year filers.

Proposal: Add association and sponsored captives to the March 15 due date. Specify the form to be used for fiscal year filers.

*****Premium Taxes*****

Sec. 3. – Premium Tax Due Date and Taxes on Loss Portfolio Transfers

Background: When we granted companies more time to prepare their annual statement, we did not adjust the premium tax due date to coincide. As a result, premium taxes are due before the statement upon which the tax return s based is prepared. A significant number of errors ensued, requiring re-filing of tax returns.

Our current statute also specifically provides that no tax is due on Loss Portfolio Transfers (LPTs) – the transfer of insurance liabilities and their supporting assets from one captive to another – if the older captive is being shut down. The transfer is a balance sheet only transaction and not considered a taxable event. We have treated transfers of a parent company’s self-insured losses (i.e. reserves held on the parent’s balance sheet, not in a captive) as a non-taxable transaction for the same reasons - it is a balance sheet only transaction. However, such a transaction is not addressed in statute.

Last, our statute has some outdated references for tax extensions, interest, and penalties in section 6014(d). 32 VSA sections 5868 and 5873 grant the Commissioner of taxes the authority to extend the time for a taxpayer to file a return and pay the tax due, but are specifically directed at income taxes. Sections 5869 and 5875, relating to penalties and interest, were repealed in 1997. A direct reference to 32 VSA section 3202 will give DFR and the Commissioner of taxes ample authority to deal with a recalcitrant taxpayer. Timely collection of premium taxes has never been an issue for the State.

Proposal: Synch up the due dates for annual statements and tax returns to the March 15 due date. Companies that continue to file their annual statement on March 1 will not have the same issue. There is no impact on revenue, and the collection of tax will fall in the same fiscal quarter.

Explicitly exclude self-insurance portfolio transfers from premium tax for clarity and surety.

Provide correct, current reference for tax penalties.

*****Branch Captives*****

Sec. 4. – Branch Captives

Background: The legislature passed H. 390 in 1999, enabling the formation of branch captives. A branch captive is a branch of an alien (non-US) captive insurance company, not a separate Vermont corporate/business entity. Branch captives are almost exclusively formed for reinsuring US employee benefits of multi-national companies. The multi-national parent company itself may or may not be US-based. The branch captive concept was developed to allow companies with an existing offshore captive to cover their US

risks without the complication of forming a separate captive entity. Branch captives are required to post security with the Commissioner or the front company for all US liabilities. The alien captive is required to have a US presence to satisfy US Department of Labor requirements.

Since the branch captive bill was passed, 8 branches have been formed here, 4 remain active. Current and former branch captive owners in Vermont include Microsoft, Kraft Foods, DHL, and Whirlpool. The most recent license was issued in 2017 after a 6-year span of no activity. Since it had been so long since we had licensed a branch captive, we took the opportunity to examine how well the law worked, and found some areas of disfunction.

Branch captives are licensed by Vermont for their insurance operations, but they do not form a Vermont corporate body.

The original branch captive law was based on the formation processes in our pure captive law, but since the branch does not actually incorporate (i.e., form a separate business entity) in Vermont and is based in another country (even if the Parent is a US company), some provisions of our law were not appropriate or practical for the actual operation of the branch. For example, in 2013 we removed the requirement for a Vermont resident director and replaced it with the requirement for a principal representative in Vermont. We have two further suggestions for amending the branch captive law to be more workable.

Proposal: First, we propose to require branch captives to designate the Commissioner of DFR as its agent for service of process. We borrowed this concept from the federal Liability Risk Retention Act which requires Risk Retention Groups to appoint the commissioners of insurance as agents for service in all states where they operate. Like branches, RRGs are not incorporated in the states where they operate. This affirmative appointment will only be necessary in truly extraordinary circumstances.

Second, we propose deleting 8 V.S.A. §6044. This section requires the branch to petition the Commissioner of DFR for a certificate of general good. In all other captives, this certificate is then presented to the Secretary of State as part of the entity's organizational process. Since the branch does not form a Vermont corporation (or other Vermont business entity), this section of the statute serves no useful purpose.

*****Risk Retention Group Governance Standards*****

Sec. 6. – Risk Retention Group Governance Standards

Background: The legislature adopted governance standards for risk retention groups during the past two sessions. Since then, we have had some practical experience with the standards, and have undergone an accreditation review by the NAIC. As a result, we propose one change:

Proposal: Amend 8 VSA §(g)(2) to require annual certification of director independence. Accreditation standards require that our laws be “substantially similar and no less effective” than the NAIC adopted model law. Upon review, the NAIC found that our “upon request” language would only be “no less effective” if we made such request annually.