This Week in State Tax (TWIST)

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Michigan: Treasury issues guidance on premiums tax and retaliatory tax liabilities for unitary insurance groups

The Michigan Department of Treasury released guidance on computing the tax liability of a unitary group of insurers. Under Michigan law, a domestic insurance company is subject to the Michigan insurance premiums tax, while a foreign (formed under the laws of a state other than Michigan) or alien (formed outside the U.S.) insurer instead pays the greater of the premiums tax or the retaliatory tax imposed under the Michigan Insurance Code. According to Michigan law, when the laws of another state or country impose, in the aggregate, greater taxes, fees, deposit requirements, or other burdens on a Michigan insurer than Michigan would impose on a similarly situated insurer from that jurisdiction, Michigan imposes a retaliatory tax on the foreign insurer. In that circumstance, the foreign insurer must pay an amount intended to equal the greater aggregate burden that its domiciliary jurisdiction would impose on a comparable Michigan insurer. In 2024, a state appellate court determined that a unitary group of insurers must file a unitary return at the group level rather than separate company returns.

The new guidance clarifies the computation of the premiums tax and retaliatory tax for a unitary group. To determine its liability, the group must first identify its foreign or alien insurer members and its domestic insurer members. A unitary group with foreign members must then determine whether those members have a retaliatory tax liability as a group, computed using solely the tax attributes of its foreign members and excluding the attributes of domestic members not subject to the retaliatory tax. If the foreign members' aggregate retaliatory tax liability exceeds their premiums tax liability, the group pays retaliatory tax with respect to those members in lieu of premiums tax and separately computes premiums tax using only the combined tax attributes of its domestic members. If the foreign members are not collectively subject to the retaliatory tax, or if the group has no foreign members, the group computes one combined premiums tax liability based on the combined tax attributes of all its members, foreign and domestic. The Department is developing new forms and instructions for 2026 and subsequent tax years, as well as interim schedules for the 2025 tax year and open prior years, to reflect this position. For open years before 2025, amended returns are not required solely to comply with the decision, although Treasury will accept them. Group returns filed in response to the appellate court decision, which had been on hold, will now be reviewed and processed under this guidance.

Contact Dan De Jong with questions about the Department's response to *Nationwide Agribusiness Insurance Co. v. Department of Treasury*.

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