



RETALIATION: WISCONSIN-DOMICILED INSURERS

May 22, 2015

QUESTION PRESENTED

Should insurers domiciled in Wisconsin include in the domiciliary state portion of the Arizona retaliation calculation the product of their Arizona premiums times the Arizona premium tax rate?

SUMMARY ANSWER

Yes. The effects of another state's retaliation laws are not excluded from Arizona's retaliation calculation as set forth in Arizona Revised Statutes ("A.R.S.") § 20-230.

ANALYSIS

The intention of retaliation is to equalize the burdens that one state imposes upon the other's domiciled insurers.

Wisconsin Statutes § 76.66 imposes retaliation on Arizona insurers when the aggregate of taxes that Arizona imposes upon Wisconsin insurers exceed the aggregate of taxes that Wisconsin would otherwise impose upon Arizona insurers. In practice, the Wisconsin tax report form requires Arizona insurers to pay the product of their Wisconsin premiums times applicable Arizona tax rates instead of tax rates otherwise prescribed by Wisconsin law.

Wisconsin Statutes § 601.55 also requires allows Wisconsin to retaliate on an item-by-item basis for fees, taxes other requirements that Arizona imposes upon Wisconsin insurers that are dissimilar from obligations that Wisconsin law imposes upon Arizona insurers.

A.R.S. § 20-230 requires an insurer domiciled in another state to calculate the aggregate of taxes, fees and other material obligations that Arizona imposes on the insurer (hereinafter referred to as "Arizona-imposed burdens") and the aggregate of taxes, fees and other material obligations that the insurer's domicile would impose upon a similar Arizona insurer doing business in the other state (hereinafter referred to as "domicile-imposed burdens"), and requires the insurer to pay retaliation for any amount by which the domicile-imposed burdens exceed the Arizona-imposed burdens. A.R.S.

§ 20-230 does not exclude from the retaliation calculation consideration of the effects that another state's retaliation laws may have. Requiring retaliation to be computed on a tax-by-tax, fee-by-fee basis rather than an aggregate-obligations basis results in Arizona insurers doing business in Wisconsin being subjected to a material obligation.

Wisconsin law has the effect of charging an Arizona insurer the greater of the taxes that would be imposed by either state plus the greater of each category of fee imposed by either state.

Example:

Line Item	Arizona	Wisconsin
Taxable casualty insurance premiums	\$10,000,000	\$10,000,000
Premium tax rate (<i>casualty, non-fire, non-vehicle</i>)	2.00%	0%*
Tax	\$200,000	\$0
Certificate of Authority renewal fee	135	100
Annual Statement filing fee	300	100
Insurance fraud assessment	700	0
Voluntary plans (liability insurer) assessment	200	0
Agent appointment fees (<i>100 non-resident producers</i>)	0	5,000
TOTALS	\$201,335	\$5,200

In this example, if Wisconsin applied retaliation in the same way that Arizona applied retaliation, Arizona insurers doing business in Wisconsin would be required to pay a total of \$201,335, the larger of the aggregate of taxes, fees and assessments. However, Wisconsin applies retaliation on a line-by-line basis, and an Arizona insurer doing business in Wisconsin would actually be required to pay \$206,335 (\$200,000 for the greater tax, \$135 for the greater C of A renewal fee, etc.). This difference in approach could subject an Arizona insurer to substantially greater costs of doing business in Wisconsin than the costs Arizona would otherwise impose upon a Wisconsin insurer doing business in Arizona.

CONCLUSION

A Wisconsin insurer doing business in Arizona must calculate retaliation based on a comparison of the obligations that Arizona imposed upon the insurer with the obligations that Wisconsin would impose upon a similar Arizona insurer, including those arising from Wisconsin's retaliation law. Wisconsin requires Arizona insurers to compute tax owed to Wisconsin as the product of the insurer's Wisconsin direct written premiums times the Arizona tax rate when the Arizona tax rate is greater than the Wisconsin minimum tax rate; therefore, a Wisconsin insurer, when completing its retaliation report, must compute the obligation that Wisconsin would impose upon an Arizona insurer on the same basis – the product of the greater tax rate (Wisconsin or Arizona) times Arizona direct written premium.