



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
25 BEAVER STREET
NEW YORK, NEW YORK 10004

George E. Pataki
Governor

Howard Mills
Superintendent

The Office of General Counsel issued the following opinion on October 12, 2005, representing the position of the New York State Insurance Department.

Re: Use of Captive Insurers – Self Procurement Tax.

Question Presented:

Will the establishment of a captive insurance company, either off shore or within the United States, cause the parent to owe any tax on premiums paid for coverage on risks that reside in New York?

Conclusion:

Yes, the establishment of a captive insurance company, either off shore or within the United States (unless the captive is domiciled in New York), will cause the parent to owe the 3.6% tax on independently procured insurance on premiums paid for coverage on risks that reside in New York.

Facts Presented:

Company A is considering setting up a pure captive insurance company (i.e., a captive insurer that is wholly owned by the parent alone). The potential captive parent company has operations in several states, including New York, and would pay the captive insurer premium to insure risks in each state in which it has business operations.

Analysis:

Article 33-A of the New York Tax Law (§§ 1550 – 1557) imposes a 3.6% tax on premiums paid on insurance contracts placed with an insurer that is not authorized to conduct business in New York. Where the premiums are allocable only in part to risks resident in New York, only the portion allocable to New York risks is subject to the tax.

New York Tax Law § 1551 provides as follows:

There is hereby imposed on any person who purchases or renews a taxable insurance contract from an insurer not authorized to transact business in this state under a certificate of authority from the superintendent of insurance a tax at the rate of three and six-tenths percent of the premiums paid or to be paid, less returns thereon, for such insurance. Nothing in this article modifies or abrogates any provision of the insurance law.

N.Y. Tax Law § 1551 (McKinney 2000).

Nothing in section 1551 or any other section of Article 33-A provides an exemption for coverage that is obtained from a captive insurer not licensed by the New York Department of Insurance. Were Company A to domicile its prospective captive in New York, however, it would be exempt from the self-procurement tax, in that a New York domiciled captive licensed pursuant to Article 70 of the New York Insurance Law constitutes an authorized insurer.

For further information you may contact Supervising Attorney Michael Campanelli at the New York City Office.