

**Florida Department of Revenue
Tax Information Publication**

TIP 05B8-01

Date: July 11, 2005

**INSURANCE PREMIUM TAX
2005 LEGISLATIVE CHANGES**

The purpose of this TIP is to inform insurers about some important changes made by Chapter 2005-280, Laws of Florida (L.O.F.).

SALARY TAX CREDIT

1. ACTION REQUIRED BEFORE AUGUST 1, 2005 -- A new alternative to the standard salary tax credit computation has been created. If an affiliated group of corporations wishes to make an irrevocable election for this alternative salary credit computation, the parent company of the affiliated group of corporations must send a letter to the Florida Department of Revenue, Attention: Miscellaneous Tax Unit, 5050 West Tennessee St., Building F-3, Tallahassee, FL 32399-0150. The letter must be postmarked on or before August 1, 2005, and must contain a statement that the affiliated group of corporations is making an irrevocable election to calculate its salary tax credit under s. 624.509(5)(a)2., Florida Statutes (F.S.). The letter must include a list of all corporations in the affiliated group of corporations, their federal identification numbers, and an indication whether each corporation is an insurance company. The letter must also contain a list of the insurance companies that were members of the affiliated group of corporations as of December 31, 2002, the amount of salary credit allowed for each insurance company that was a member of the affiliated group of corporations as of December 31, 2002, and the amount of taxable premiums of each insurance company that was a member of the affiliated group of corporations as of December 31, 2002. An officer of the parent company who is authorized by the parent company and its affiliated group must sign the letter making the irrevocable election.

This new alternative allows an affiliated group of corporations, which includes at least one insurance company writing premiums in Florida, to elect on or before August 1, 2005, to take a credit against the net premium tax in an amount that may not exceed 15 percent of the salary of the employees of the affiliated group of corporations that perform insurance-related activities, are located or based within Florida, and are covered by Chapter 443, Florida Statutes (F.S).

The amount of salary credit allowed under this exception is limited to the combined Florida salary tax credits allowed for all insurance companies that were members of the affiliated group of corporations for the tax year ending December 31, 2002, divided by the combined Florida taxable premiums written by all insurance companies that were members of the affiliated group of corporations for the tax year ending December 31, 2002, multiplied by the combined Florida taxable premiums of the affiliated group of corporations for the current year.

The election of this alternative is irrevocable and binding upon successors and assigns of the affiliated group of corporations electing this alternative. However, if a member of an affiliated group of corporations acquires or merges with another insurance company after the date of the irrevocable election, the acquired or merged company is not entitled to the affiliated group election and shall only be entitled to calculate the salary tax credit under the regular methodology [Section 624.509(5)(a)1, F.S.].

In no event shall the salary paid to an employee by an affiliated group of corporations be claimed as a credit by more than one insurer or be counted more than once in any insurer's calculation of the salary tax credit. Only the portion of an employee's salary paid for the performance of insurance-related activities may be included in the calculation of the salary tax credit.

The term "affiliated group of corporations" means two or more corporations that are entirely owned directly or indirectly by a single corporation and that constitute an affiliated group as defined in s. 1504 (a) of the Internal Revenue Code. See Section 26 of Chapter 2005-280, L.O.F.

2. The Legislature reiterated its intent that the term "employees" does not include independent contractors or any person whose duties require that person to hold a valid license under the Florida Insurance code except adjusters, managing general agents, and service representatives, as those terms are defined in s. 626.015, F.S. The reference in s. 624.509(5), F.S., to specific subsections of s. 626.015, F.S., was replaced with a reference to the specific terms "adjuster," "managing general agent," and "service representative," as defined in s. 626.015, F.S. This eliminates the confusion that some taxpayers experienced when the Legislature made changes to s. 626.015, F.S., without updating the references in s. 624.509(5), F.S., when there was no Legislative intent to change the definition of an employee. See Sections 26 and 29 of Chapter 2005-280, L.O.F.

3. An exception to the standard salary tax credit requirements has been provided for a mutual insurance holding company that was in existence on or before January 1, 2000. The mutual insurance holding company with a service company subsidiary may allocate the salaries of the service company to its related entities based on a ratio of the amount of time during the tax year that each individual employee spends performing services or otherwise working for each company in the group over the total amount of time during the tax year that each individual employee spends performing services for all companies. An insurer claiming this exception must be able to substantiate by means of adequate records, the amount of salary allocated to each company by each employee. This exception does not apply for any tax year unless funds sufficient to offset the anticipated salary credits have been appropriated to the General Revenue Fund prior to the due date of the final return for that year. The appropriation in section 28 of House Bill 1813, which was intended to fund this provision, was vetoed by Governor Bush on June 20, 2005. Therefore, this provision does not apply at this time.

See sections 26, and 28 of Chapter 2005-280, L.O.F and Governor Bush's veto letter of SB 1813, section 28 dated June 20, 2005.

Text of Governor Bush's veto letter

June 20, 2005

Ms. Glenda E. Hood
Secretary of State
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399

Dear Secretary Hood:

By the authority vested in me as Governor of Florida, under the provisions of Article III, Section 8, of the Constitution of Florida, I do hereby transmit House Bill 1813 with my signature, but withhold my approval of Section 28, comprising a specific appropriation, enacted during the 107th Session of the Legislature of Florida since statehood in 1845, during the Regular Session of 2005, and entitled:

An act relating to tax administration...

This bill encompasses various enhancements to the tax code as recommended by the Department of Revenue, as well as other tax issues that expand current tax exemptions and reduce tax avoidance.

There is one provision in the bill of particular concern. For purposes of the Insurance Premiums Tax the bill provides a salary tax credit for service company employees that perform services for members of a mutual insurance holding company that was in existence on or before January 1, 2000. Any such company is allowed the credit each year contingent upon an appropriation to the General Revenue Fund. For this purpose, the bill provides a \$2.6 million appropriation from the Workers' Compensation Administration Trust Fund to the General Revenue Fund for Fiscal Year 2005-2006.

I have reservations about the appropriation from the Workers' Compensation Administration Trust Fund. All companies that provide workers' compensation insurance pay an assessment into this trust fund. However, the exemption in House Bill 1813 has a very narrow application, probably to a single entity. I believe it is inappropriate for one insurance company to benefit from a narrow tax credit that is, in effect, funded by, and to the detriment of, its competitors. In addition, this appropriation was added on the floor of the Senate and was not heard in any public meeting.

For these reasons, I hereby sign House Bill 1813 into law but withhold my approval and hereby veto the following section:

Section 28. The sum of \$2.6 million is appropriated from the Workers' Compensation Administration Trust Fund to the General Revenue Fund for the 2005-2006 fiscal year.

Sincerely,

**Emergency Management Preparedness and Assistance Surcharge
(\$2 and \$4 Surcharge)**

The \$2 and \$4 surcharge on surplus lines policies and independently procured policies issued or renewed on or after January 1, 2006, is required to be remitted to the Surplus Lines Service Office when the Surplus Lines Tax is paid. The Department of Revenue will continue to collect the \$2 and \$4 surcharge on all other applicable policies.

The \$2 and \$4 surcharge on surplus lines policies and independently procured policies issued or renewed prior to January 1, 2006 should be remitted to the Department of Revenue. Insurers, agents, and individuals who are only remitting \$2 and \$4 surcharge on surplus lines policies and independently procured policies to the Department of Revenue will file a final insurance premium tax return (Form DR-908) for the 2005 calendar.

See Section 22 of Chapter 2005-280, L.O.F.

RETALIATORY TAX

In the computation of the retaliatory tax, 80 percent of the salary credit claimed by an insurer is added back into the retaliatory calculation. Effective July 1, 2005, a portion of the remaining 20 percent of the salary credit claimed may also be added back into the retaliatory calculation. The portion of the remaining 20 percent shall be calculated by multiplying the remaining 20 percent by a fraction, the numerator of which is the sum of the salaries qualifying for the salary credit of employees whose place of employment is located in an enterprise zone created pursuant to Chapter 290, F.S., and the denominator of which is the sum of the salaries qualifying for the salary credit.

See Section 27 of Chapter 2005-280, L.O.F.

STATUTE OF LIMITATIONS

An exception to the normal statute of limitations for the insurance premium tax and retaliatory tax has been created when an insurer is required to amend its corporate income tax liability under Chapter 220, F.S., or a taxpayer receives a refund of its workers' compensation administrative assessment paid under Chapter 440, F.S.

Insurers are now required to file an amended insurance premium tax return within 60 days after receipt of a refund of the workers' compensation administrative assessment paid under Chapter 440, F.S. The insurance premium tax return that is required to be amended is the insurance premium tax return on which the refunded workers' compensation administrative assessment was originally used in determining the workers compensation administrative credit against the insurance premium tax. Only the change in the amount of the workers' compensation administrative assessments paid and its affects on the computation of the insurance premium tax and retaliatory tax are to be made on the amended return when the amended return is otherwise out of statute for assessment/refund.

Insurers are now required to file an amended insurance premium tax return within 60 days after its corporate income

tax liability under Chapter 220, F.S., is required to be amended.

At this time, insurers should only file amended corporate income tax returns and corresponding insurance premium tax returns when the adjustments result in a net change to their total Florida tax liability (combined corporate income tax and corresponding insurance premium tax). See TIP 96B8-03.

See Sections 1, 21, and 25 of Chapter 2005-280, L.O.F.

FOR MORE INFORMATION

This document is intended to alert you to the requirements contained in Florida laws and administrative rules. It does not by its own effect create rights or require compliance.

For forms and other information, visit our Internet site at www.myflorida.com/dor. Or call Taxpayer Services, 8:00 a.m., to 7:00 p.m., ET, Monday through Friday, excluding holidays, at 800-352-3671 or 850-488-6800.

Hearing- or speech-impaired persons should call our TDD at 800-367-8331 or 850-922-1115.

For a detailed written response to your questions, write the Florida Department of Revenue, Taxpayer Services, 1379 Blountstown Highway, Tallahassee, FL 32304-2716.