

# CAPTIVE INSURANCE COMPANIES TAXATION

## REVISIONS TO THE NEW YORK TAX LAW REGARDING CAPTIVE INSURERS

*Note: Insurance companies are taxed under Article 33 of the New York Tax Law. Chapter 389 of the Laws of 1997 amended various sections of that Article to impose a premium tax (referred to as a "franchise tax" under NY law) on captive insurance companies. This tax is set forth in the new Section 1502-b. Captives are not subject to any other taxes under Article 33 of the New York Tax Law. Following are those Article 33 sections that were amended by Chapter 389, with the provisions applicable to captive insurance companies underscored. (Following the amendments is a table summarizing the tax imposed on captive insurance companies by Section 1502-b.)*

### **Section 1500. General Definitions.**

The following words, as used in this article, shall have the meanings hereinafter set forth.

(a) The term "insurance corporation" includes a corporation, association, joint stock company or association, person, society, aggregation or partnership, by whatever name known, doing an insurance business, and, notwithstanding the provisions of section fifteen hundred twelve of this article, shall include (1) a risk retention group as defined in subsection (n) of section five thousand nine hundred two of the insurance law, (2) the state insurance fund and (3) a corporation, association, joint stock company or association, person, society, aggregation or partnership doing an insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of the insurance law. The definition of the "state insurance fund" contained in this subdivision shall be limited in its effect to the provisions of this article and the related provisions of this chapter and shall have no force and effect other than with respect to such provisions. The term "insurance corporation" shall also include a captive insurance company doing a captive insurance business, as defined in subsections (c) and (b), respectively, of section seven thousand two of the insurance law; provided, however, "insurance corporation" shall not include the metropolitan transportation authority which is expressly exempt from the payment of fees, taxes or assessments, whether state or local.

(e) The term "taxpayer" means any insurance corporation subject to the tax imposed under section fifteen hundred one or fifteen hundred ten or any captive insurance company subject to the tax imposed under section fifteen hundred two-b of this article.

### **Section 1502-b. Computation of tax for captive insurance companies.**

(a) In lieu of the taxes and tax surcharges imposed by sections fifteen hundred one, fifteen hundred five-a, and fifteen hundred ten of this article, every captive insurance

company licensed by the superintendent of insurance pursuant to the provisions of article seventy of the insurance law, other than the metropolitan transportation authority which is expressly exempt from the payment of fees, taxes or assessments whether state or local, shall, for the privilege of exercising its corporate franchise, pay a tax on (1) all gross direct premiums, less return premiums thereon, written on risks located or resident in this state and (2) all assumed reinsurance premiums, less return premiums thereon, written on risks located or resident in this state. The rate of the tax imposed on gross direct premiums shall be four-tenths of one percent on all or any part of the first twenty million dollars of premiums, three-tenths of one percent on all or any part of the second twenty million dollars of premiums, two-tenths of one percent on all or any part of the third twenty million dollars of premiums, and seventy-five thousandths of one percent on each dollar of premiums thereafter. The rate of the tax on assumed reinsurance premiums shall be two hundred twenty-five thousandths of one percent on all or any part of the first twenty million dollars of premiums, one hundred and fifty thousandths of one percent on all or any part of the second twenty million dollars of premiums, fifty thousandths of one percent on all or any part of the third twenty million dollars of premiums and twenty-five thousandths of one percent on each dollar of premiums thereafter. The tax imposed by this section shall be equal to the greater of (i) the sum of the tax imposed on gross direct premiums and the tax imposed on assumed reinsurance premiums or (ii) five thousand dollars.

(b) In determining the amount of gross direct premiums or assumed reinsurance premiums taxable in this state, all premiums written, procured or received in this state shall be deemed written on property or risks located or resident in this state except such premiums as are properly allocated or apportioned and reported as taxable premiums or which have been used as a measure of a tax of any other state or states.

(c) The definition of the term "premium" set forth in subdivision (c) of section fifteen hundred ten of this article shall apply to this section. In addition, "gross direct premium" shall be determined as provided in such subdivision (c). Provided, however, that the term "premium" shall also include any amount received by a captive insurance company as consideration for insurance provided, in the case of a pure captive insurance company, to its parents and affiliated companies, and, in the case of a group captive insurance company, to the industrial insureds that comprise the industrial insured group. The terms "pure captive insurance company", "group captive insurance company", "industrial insureds" and "industrial insured group" shall have the same meanings as such terms have in section seven thousand two of the insurance law. The reporting of premiums for the purpose of the tax imposed by this section shall be on a written basis or on a paid-for basis consistent with the basis required by the annual statement filed with the superintendent of insurance pursuant to section seven thousand six of the insurance law.

(d) The superintendent of insurance shall have the same power, duty and responsibility to examine the returns of captive insurance companies as such superintendent has with respect to insurance corporations as set forth in subdivision (e) of section fifteen hundred ten of this article.

(e) The credits set forth in section fifteen hundred eleven of this article shall not be allowed against the tax imposed by this section.

## Section 1515. Return

(f) In the discretion of the commissioner, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations, or substantially all the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations or by interests which own or control either directly or indirectly substantially all the capital stock of one or more other corporations, may be required or permitted to make a return on a combined basis covering any such other corporations and setting forth such information as the commissioner may require; provided, however, that no combined return covering any corporation not a taxpayer shall be required unless the commissioner deems such return necessary because of intercompany transactions or some agreement, understanding, arrangement or transaction referred to in subdivision (g) of this section, in order properly to reflect the tax liability under this article. In the case of a combined return, the tax shall be measured by the combined entire net income or combined capital of all the corporations included in the return. In computing combined entire net income intercorporate dividends shall be eliminated, in computing combined business and investment capital intercorporate stockholdings and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness shall be eliminated and in computing combined subsidiary capital intercorporate stockholdings shall be eliminated. No taxpayer subject to the tax imposed by section fifteen hundred two-b of this article may be required or permitted to be included in a combined return.

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### SUMMARY TABLE OF TAXES ON CAPTIVE INSURERS UNDER SECTION 1502-b OF THE NEW YORK TAX LAW

Taxes are levied on all premiums written unless such premiums are taxed in another jurisdiction.

TYPE OF BUSINESS	PREMIUMS	SECTION 1502-b TAX RATE
<b>Direct Business</b>	\$0-\$20 million	.4%
	\$20-\$40 million	.3%
	\$40-\$60 million	.2%
	Greater Than \$60 million	.075%
<b>Reinsurance Assumed</b>	\$0-\$20 million	.225%
	\$20-\$40 million	.15%
	\$40-\$60 million	.05%
	Greater Than \$60 million	.025%