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Insurance State Taxes:

Opportunities and Risks

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Disclaimer

The information provided herein is educational in nature and is based on authorities that are subject to change

Course Topics

- Sales & Use Tax
- Income / Franchise Tax
- Premium / Retaliatory Tax
- Unclaimed Property Tax





Sales & Use Tax

The Multiple Points of Use of software opportunity

- Employees, agents and customers located in many states are granted access to software and related services (Software as a service)
- Sales taxes are generally collected in 22 states by software vendors based on the state to which the invoice is sent.
- Most states permit users of services to source the service to the state of use.
- However, 24 states do not impose sales and use tax on SAAS remotely accessed software (for example CA, FL, NJ, GA)



Sales & Use Tax

Leverage workflow technology to identify other industry specific opportunities

- Premiums taxes imposed “In lieu of all other taxes” California Nevada (See section 28(f) of Article XIII of the California Constitution)
- New York tax on information services
- Illinois - five criteria for exemption from tax
- Direct mail printed materials promotional materials
- Surtax caps FLA
- Data center and call center exemptions MN WISC MICH IL CT NY NC
- Enterprise wide software exemptions NC



Remote Employees

- Tax/HR/Legal Coordination
- Written policy requirements
- Unusual NY and CA rules- convenience of the employer
- Repercussions and penalties (SUI and withholding issues)
- Considerations to think about
- Reciprocity



Income / Franchise Tax

- **Items to look out for:**
 - ✓ Combined / Unitary filings
 - ✓ New conformity with IRS regulations
 - May need to change state modifications
 - ✓ CAMT – role in state conformity
- **Florida - State Farm Case (in litigation)**
 - Proration on tax-exempt income
- **Pennsylvania – Radnor Case**
 - Aims to tax all income outside of insurance activity
 - Status - filings were due in last few weeks
 - 2 other counties doing the same

Premium Tax

- **National Trends:**

- ✓ Assessment and surcharge increases
- ✓ Travel insurance – inland marine (fire tax)
 - DE, KS, MA, MT, NV, NJ, NY, ND, WV
- ✓ Increased guaranty fund assessments
- ✓ ESG wars – example TX and CT
- ✓ In lieu of protection compromised?
 - Washington – B&O tax – Envolv Case

- **Michigan – Nationwide Case**

- Did not allow the affiliated group to file combined for premium and retaliatory taxes (no sharing of credits)



Unclaimed Property

- **Insurance Company Considerations:**

- ✓ Common property types:

- Unclaimed life insurance proceeds
- Uncashed payments (e.g., claim, premium, annuities, proceeds, etc.)
- Unused credits and unidentified remittances (e.g., premium refunds and overpayments)

- ✓ Varying state requirements regarding life status

- **Best Practices:**

- ✓ Maintain unclaimed property-specific policies and procedures

- Objective: timely resolve amounts with owners and/or beneficiaries before contact is lost and minimize escheatment requirements

- ✓ Address and beneficiary validation

- ✓ Documentation and record retention

Unclaimed Property

• Delaware Enforcement:

✓ VDA “Invitation” Letters (upcoming 2024)

- Detailed review of books and records going back 15 years
- Target Delaware-incorporated companies → estimation
- 90 days to respond before referral to audit
- Benefits over audit

✓ Verified Report Notices (upcoming 2024)

- Preview from recent non-insurance company mass mailings
- Validation of calendar year 2022 unclaimed property filing
- 30 days to respond before referral to VDA/audit
- Requested materials: notarized attestation, entity listing, copy of written unclaimed property policy and procedures

Unclaimed Property

- **Other States:**

- ✓ East coast / New England self-review notices:

- MA, NY, RI

- Targeting companies with perceived underreporting

- Lookback period typically the same as formal audit

- Often conducted by third party contract firm

- Takeaway: timely respond to avoid formal audit

- ✓ California updates

- Disclosure on income tax returns

- Information sharing with State Controller's office

- New unclaimed property voluntary compliance program

- What's next for California and other states?

Questions?





Thank You

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