DEPARTMENT OF REVENUE

CORPORATE FRANCHISE TAX
Captive Insurance Company Definition

April 4, 2019

	Yes	No
DOR Administrative Costs/Savings	X	

Department of Revenue
Analysis of H.F. 1302 (Davids), As Amended (H1302A2)

	Fund Impact			
	F.Y. 2020	**F.Y. 2021**	**F.Y. 2022**	**F.Y. 2023**
	(000's)			
General Fund	$0	$0	($400)	($400)

Effective retroactively beginning with tax year 2017.

EXPLANATION OF THE BILL

Current Law: Insurance companies are generally exempt from the Minnesota corporate franchise tax and instead are subject to a gross premium tax. The basic qualification to determine whether a company qualifies as an insurance company is whether 50% or more of its income is from insurance.

The 50% test affects situations where a unitary business sets up a self-funded insurance company that is more investment company than it is an insurance company. If a corporation fails to meet the definition of an insurance company, its income is subject to the corporate franchise tax. Such a corporation is called a captive insurance company.

The 2017 legislature further qualified what is an insurance company based on whether a company sells admitted insurance. Insurance sold by an admitted insurance company is subject to the gross premium tax. The gross premium tax may be based on either the retaliatory method or a reciprocal exemption from the retaliatory method.

Proposed Law: The bill uses an entirely new method to define what is a taxable insurance company. This new definition would be applied on a retroactive basis.

Under the bill, an insurance company is tax-exempt if it fails to be defined as a disqualified captive insurance company. A company is a disqualified captive insurance company if it meets the definition of two tests.

First, a company must be defined as a captive insurance company. A captive insurance company is 1) is a registered captive insurance company **or** 2) *as amended,* it receives less than 50% of premium income from sources outside of its unitary business.

Second, a company must be defined as a disqualified captive insurance company. A disqualified captive insurance company is defined as a company that 1) receives less than 50% of gross receipts from premiums **or** 2) pays less than 0.50% in insurance gross premium taxes or comparable taxes.

If a corporation meets the definition of a disqualified captive insurance company, its income is included in the unitary income of the group, and its income is subject to the corporate franchise tax.

REVENUE ANALYSIS DETAIL

- One of the conditions for being classified as disqualified captive insurance company is paying less than 0.50% in premium taxes. This amount of premium taxes is low when compared to the same taxes paid by traditional insurance companies.
- The bill has a less inclusive definition of what is a taxable insurance company than under current law. Due to this less inclusive definition, the bill’s language appears to offer some companies selling non-admitted insurance companies that are subject to the corporate franchise tax will be exempt from tax as early as fiscal year 2022.
- The conditions defining a disqualified captive insurance company introduce a great amount of uncertainty as compared to current law.

Minnesota Department of Revenue
Tax Research Division
www.revenue.state.mn.us/research_stats/Pages/Revenue-Analyses.aspx

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