NCSL Task Force on State and Local Taxation

Overview of Insurance Retaliatory Taxes

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Overview

- History
- McCarron-Ferguson Act
- Western & Southern Decision
- Retaliatory Tax Facts
- Elements of Computation
- Retaliatory Tax Example
- Questions
History

- State premium and retaliatory taxes date back to the 19th century
- Premium taxes are calculated on a gross receipts basis
- Generally imposed “in lieu” of state income taxes
- Retaliatory taxes are imposed to equalize tax burdens between the taxing state and the “home state”
McCarran-Ferguson Act

- Passed by Congress in 1945
- Gave states the right to regulate and tax the business of insurance
- Eliminated commerce clause protection
- Paved the way for decision in Western & Southern
Western & Southern Decision

- California retaliatory statute constitutional even though facially discriminatory

- Retaliatory laws must meet equal protection rational basis standards and serve legitimate state purpose
  - Promoted domestic industry by leveling the playing field and promoting interstate business
  - Statutes passed solely to raise revenue do not meet standards
Retaliatory Tax Facts

- Unique to insurance industry
- Imposed by all states except Hawaii
- Imposed on non-domestic (foreign) insurers
- Comparison of burdens imposed by taxing state vs. burdens imposed by home state
- Levels playing field
- Deters states from increasing rates or burdens
Elements of Computation

- Premium tax rates
- Credits
- Exemptions and deductions
- Insurance company assessments
- Local premium taxes
- Other insurance industry taxes, fees or burdens
Retaliatory Tax Example

- OT Insurance Company
  - Domesticated in State A ("home state")
  - State A’s premium tax rate is 2%

- OT files return in State B
  - State B’s premium tax rate is 1.5%

- OT premiums in State B are $200 million
Retaliatory Tax Example

State B Tax Computation

- OT premium tax is $200 million x 1.5% = $3 million
- OT premium tax @ “home state” 2% rate = $4 million
- OT retaliatory tax paid to State B = $1 million
- OT State B premium/retaliatory taxes = $4 million
Retaliatory Tax Example

- OT Insurance Company files in 50 states
- Every states’ premium tax rate is 2%
- OT’s “home state” increases its rate to 2.2%
- OT’s “home state” premium taxes will increase by 10%
- OT will also be forced to pay an additional 10% in each of the other 49 states in the form of a .2% retaliatory tax
Questions?