Insurance Taxes
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I. Alternate taxes imposed "in lieu" of corporation license taxes

A. Insurance company gross premium taxes

1. Rationale for imposition

A 1959 paper reviewing Michigan's insurance premiums tax (first enacted in 1861) contained the following statements:

> "Originally in most states the primary purpose of the tax was not to raise revenue, but to cover the expenses of regulation, provide funds for fire protection, encourage domestic insurance companies by imposing a discriminatory burden on foreign companies, or to retaliate against other states which were discriminatory against Michigan companies"

Citizens Research Counsel of Michigan, Memorandum #192, No. 6, April 7, 1958, Summary Digest of Michigan Tax Study Staff Reports.

2. Taxation of insurance companies

(a) State

(i) From 1869[1] to 1944, the U.S. Supreme Court rejected commerce clause challenges to state insurance regulation/taxation on the basis that the insurance business was not "commerce."

(ii) In *U.S. v. South-eastern Underwriters Ass'n*, 322 U.S. 533 (1944) the conclusion that the insurance business did not constitute interstate commerce was expressly rejected. The change came not in response to a challenge to state taxation but rather in finding that the Sherman Antitrust Act applied to insurance companies

(iii) To allay fear that the *South-eastern* decision affected the system of state insurance regulation and taxation that had developed over the preceding 75 years, the McCarran-Ferguson Act was enacted in early 1945, 59 Stat. 33-34 (15 U.S.C. 1011 et seq.)

> "Declaration of policy. Congress declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States."

15 U.S.C. 1011 (2009)

> "Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948
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> (a) State regulation. The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.
>
> (b) Federal regulation. No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided,* That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law."

15 U.S.C. 1012 (2009)

(iv) state tax on gross premiums tax was approved before[2] and after[3] the *South-eastern* decision

(v) state retaliatory taxes were specifically upheld under the McCarran-Ferguson Act; *Prudential Ins. Co. v. Hobbs*, 328 U.S. 822 (1946) (*per curium*) (Kansas retaliatory tax); *Western & Southern L. I. Co. v. Bd. of Equalization*, 451 U.S. 648 (1981) (California retaliatory tax).

(vi) state taxes on insurance companies can be attacked on other (non-Commerce Clause) grounds, e.g., equal protection violation was found when tax on the gross premiums of domestic insurers was substantially lower than tax on the gross premiums of foreign insurers, *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869 (1985).

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[1] Paul v. Virginia, 8 Wall. 168, 183 (1869), "Issuing a policy of insurance is not a transaction of commerce."

[2] *Equitable Life Assurance Society of the United States v. Pennsylvania*, 238 U.S. (1915). Pennsylvania levied a tax on the privilege of doing business in the state measured by the gross premiums received from business done in the state.

[3] *Prudential Insurance Co. v. Benjamin*, 328 U.S. 408 (1946). South Carolina imposed a gross premiums tax on foreign insurances and a corporation income tax on domestic insurers.

(vii) state direct procurement taxes – imposed not on insurer, but rather on insureds that obtained insurance from other than companies licensed in the state; rate usually higher than gross premium rate to discourage obtaining coverage from unauthorized insurers

1. Dow Chemical Co. challenged TX direct procurement taxes in 2001; TX Court of appeals ruled that Dow was not subject to the tax for a transaction that occurred in another state and involved shipyards in the other state; Texas S.Ct and U.S. S.Ct declined review

2. NAIC Nov. 2008 memo re problems; lack of solutions: "The payment of premium tax on surplus lines policies and direct placements with multi-state exposures has been a chronic and significant problem for both the surplus lines industry and state insurance regulators."

(vii) Interstate compacts are utilized by states

1. Interstate Insurance Compact," which provides centralized review of life, disability, and long-term insurance policies and annuity products (currently 33 states).

(viii) Model acts/ regulation

1. NAIC (National Association of Insurance Commissioners) model laws, regulations and guidance; its web-site has a table of contents of these items, but not copies of the documents

(a) Investments of Insurers Model Act (defined limits version) (1995?)

(b) Investments of Insurers Model Act (defined standards version) (199?)

(c) Insurance Holding Company System Regulatory Act (1970s?; 1984 amendment for abusive affiliate transactions, 2004)

(A) MT adopted 1971; the MT code commissioner comments state it was adopted by all states except HI, LA, MI, and ND.

(B) The NAIC Commission comments to Section 2(a) of the Insurance Holding Company System Regulatory Act, which specifies the activities subsidiaries of insurance companies can engage in, state that the bill "neither expressly authorizes noninsurance subsidiaries nor restricts subsidiaries to insurance-related activities . . . [believing] that "this is a policy decision which should be made by each individual state."

(i) Before enactment in 1999 Gramm Leach Bliley Act, holding companies could not own either or both insurance companies and securities firms together with banks. GLBA allowed it by "financial holding companies" and provided for "functional regulation" -- each regulated company would stay regulated as usual and the Federal Reserve Board became the umbrella regulator of the financial holding company. In response, NAIC began a "insurance holding company initiative" under which NAIC formed the "Financial Services Holding Company Analysis/Review/Examination Working Group "in 2000 to (as stated in GAO-01-885R):

- "assess the implications of GLBA on the regulatory authority, focus, and procedures provided in NAIC's existing Insurance Holding Company System Model Act and accompanying Model Regulation;
- evaluate the manner in which insurance groups should be reviewed by insurance departments, considering the use of consolidated financial statements and a special regulatory group report;
- determine the nature and type of information insurance regulators need from other functional regulators of noninsurance financial holding company affiliates in order to enhance the analysis and examination procedures for insurance companies;
- . develop and document standard review procedures for acquisition or change-of-control statements (Form A), annual registration statements (Form B), transactions subject to prior notice (Form D), extraordinary dividends, and other significant filings; and
- . make recommendations regarding mechanisms to enhance communication and coordination among all functional regulators, including the role of NAIC resources in supporting such communications and coordination."

GAO report continues: "At its national meeting in December 2000, NAIC's Financial Services Holding Company Analysis/Examination/Review Working Group introduced a draft of *Framework for Insurance Holding Company Regulation*, dated November 10, 2000, for review and comment. The stated intent of this draft document was to (1) serve as a framework for state insurance regulators in supervising insurance holding companies and insurance subsidiaries of financial holding companies; (2) encourage initiative and cooperation among state insurance regulators for more effective and efficient state regulation; (3) provide a basis for discussion with the appropriate primary supervisors of a financial holding company's banking, insurance, or securities subsidiary; (4) provide standard review processes and procedures for holding company filings; and (5) address the report and recommendations of the Ad Hoc Task Force on

Solvency and Anti-Fraud, dated April 13, 2000 (see enclosure VII). At the time, NAIC officials noted that the draft did not yet include detailed guidance for coordinating financial examinations among different functional regulators.

(d) Insurance Holding Company System Model Regulation with Reporting Forms and Instructions

(e) Credit for Reinsurance Model Act

(f) Credit for Reinsurance Model Regulation

(g) Special Purpose Reinsurance Vehicle Model Act

(h) Reinsurance Intermediary model Act

(i) Life and Health Reinsurance Agreements Model Regulation

(A) GAO/T-GGD-92-13 – in the 1980s, four large insolvent life insurance companies were taken over by state regulators. "To bolster their statutory surplus and reported financial condition, the four insurers reduced policy reserves on their balance sheets through reinsurance transactions and received from their parent holding companies millions of dollars in surplus infusions and loans." The companies functionally "rented" surplus through the "surplus relief reinsurance" which did not shift any risk of loss,

In 1986 NAIC adopted the model regulation on life reinsurance agreements based on NY's law (enacted in reaction to the insolvencies). As of Oct 1991, 19 states had acted to adopt the model.

(j) Assumption Reinsurance Model Act

(k) Allocation of Surplus Lines and Independently Produced Insurance Premium Tax on Multi-state Risks Model Regulation

(l) 1990 NAIC established a voluntary state accreditation program to improve state oversight of insurers' solvency (between 1986 and 1992, 276 insurance company insolvencies)

GAO/T-GGD-92-13, at 4. "During the late 1970s and 1980s, investment strategies in the life insurance industry changed, and profit margins dropped due to increasing competition from mutual funds, savings and loans, and other financial institutions that offered investment products at comparatively higher rates of return. Before the late 1970s, life insurance companies focused on bearing risks of death and illness and sold products offering a relatively low but stable return for policyholders. in response to increasing competition for policyholders' savings, insurers began issuing new interest-sensitive products such as universal life, single-premium annuities, and guaranteed investment contracts (GICS). The increasing emphasis on selling investments had significant financial effects. The higher rates of return insurers offered to be competitive substantially narrowed their profit margins. Also, in an attempt to pay these higher rates and maintain profits, some insurers—including the ones we are discussing today—invested heavily in high-risk, high-return assets such as noninvestment grade bonds (junk bonds) or speculative commercial mortgages and real estate.

Competitive strategies like these have strained many insurers and increased the number of insurer insolvencies. The number of life/health insolvencies averaged about five per year from 1975 to 1983. Since that time, the average number more than tripled to almost 18 per year, with a high of 47 in 1989."

(ix) federal legislation

1. 1933 Banking Act of 1993, Glass-Steagall provisions. Financial institutions prohibited from simultaneously offering commercial and investment banking services
    a. section 16-restricted commercial national banks from engaging in most investment banking
    b. section 20 prohibited a member bank from affiliating in specific ways with an investment bank
    c. section 21 restricted investment banks from engaging in commercial banking
    d. prohibited investment bank directors, officers, employees, or principals from serving in those capacities at a commercial member bank of the Federal Reserve system
    e. "The Banking Act prohibited payment of interest on demand deposits, thereby limiting the ability of money-center banks to attract funds from local banks and, not inadvertently, providing a competitive shield for the profitability of local banks. It also prohibited banks from arranging loans to brokers on behalf of nonbanking customers, extending the 1931 Clearing House rule to all banks." Peter Fortune, Security Loans at Bank and Nonbanks: Regulation U (2002)
2. 1934 Regulation T, Federal Reserve Bank, rules governing securities credit extended by broker/dealers (applies to lender)
3. 1936 Regulation U, Federal Reserve Bank, rules governing securities credit extended by commercial banks (applies to lender)

4. 1968 Federal Reserve Board adopted Regulation G to cover securities credit extended by lenders other than banks, brokers, and dealers (Regulation G merged into regulation U in 1998) (applies to lender)
5. 1971 Federal Reserve Board adopted Regulation X (applies to borrower) , to limit the ability of U.S. persons or their agents to borrow abroad to circumvent Regulations T and U; 12 CFR 224.1
6. 1974 – ERISA, included pension plan protection from undiversified portfolios (hedge funds are required to follow ERISA regs when >25% of assets come from ERISA governed plans)
7. 1974 Commodities Exchange Act was amended to exclude transactions in foreign currencies, government securities, mortgages, and other specified financial instruments from the CEA as long as the transactions didn't involve contracts for future delivery "conducted on a board of trade"
8. 1976 -- subject to conditions, life insurance companies and nonlife insurance companies can file a federal consolidated income tax return. The Tax Reform Act of 1976, P.L. 94-455, IRC §1507, 90 Stat. 1525, 1739-1741, permitted taxpayers to elect to file a consolidated return that included both life insurance companies and nonlife insurance companies for tax years beginning after December 31, 1980
9. 1981 Congress authorized creation of "risk retention groups" through the "Product Risk Retention Liability Act," P.L. 97-45; 15 U.S.C. §§3901-3906, to increase the availability and affordability of commercial liability insurance
    a. 1986 amended by "Liability Risk Retention Act of 1986;" which provides for the creation of insurance companies to self-insure the risks of groups of similar businesses; primary regulation in state of domicile, insurance laws of other states largely preempted
        i. several large risk retention groups failed prompting congressional inquiry and a GAO report" GAO-0536. The report found that state standards differed because some states chartered RRGs as captive insurance companies, which operate under fewer restrictions –the companies clustered in the 6 states that treated them as captives and had the least regulatory experience (AZ, DC, HI, NV, SC; VT) also many RRGs were owned by management companies with conflicts of interest
            1. report says states said that RRGs increased availability and affordability to hard to insure/expensive groups – medical malpractice and construction contractors
10. 1983 – SEC and CFTC entered into the "Shad-Johnson Accord," allocated oversight between them
    a. CFTC jurisdiction:
        i. options on commodities
        ii. futures contracts and options on futures contracts on commodities (including individual exempt securities, permitted securities indices and foreign currencies)
        iii. futures contracts and options on foreign currencies not traded on a national securities exchange
    b. SEC jurisdiction
        i. options on securities and securities indices;
        ii. options on foreign currencies traded on a national securities exchange
        iii. offer and sale of securities issued by commodity pools
    c. instruments were prohibited:
        i. futures contracts and options on futures contracts on
            1. individual securities (other than specific exempt securities)
            2. indices of non-exempt securities settled by physical delivery
            3. indices of non-exempt securities that are not broad-based
11. 1986 Government Securities Act enacted to provide regulatory framework for government securities market (to address problems:
12. 1987 Federal Reserve allowed subsidiaries of bank holding companies to engage in securities underwriting activities up to 5% of their revenue
13. 1989 CFTC
    a. published "Statutory Interpretation Concerning Hybrid Instruments"- excluded some debt and equity instruments with payments linked to a commodity component from CEA regulation; required quantitative tests; confusion, issues
    b. issues policy statement under which specified swaps would not be subject to regulation; safe harbor if swap agreement had individually negotiated terms, was entered into in connection with swap parties' line of business, and not terminable without consent of the other swap party
14. 1993 Congress strengthened 1986 Government Securities Act to address wrongdoings in Treasury auctions
15. 1993 CFTC
    a. exempts class of hybrid instruments from CEA under a "predominance test" wherein the debt or equity component had to exceed the value of the "option-like" or "futures-like" component

b. exempts class of swap agreements-entered into between “eligible participants,” not fungible with agreements that had standardized economic terms, involve exposure to counterparty credit risk, and not traded on a “multilateral transaction execution facility”
    i. exempted most common interest rate, currency, and commodity swap agreements
    ii. didn’t cover equity derivatives

16. 1995 Private Securities Litigation Reform Act enacted to stop abusive litigation (suits filed to extract settlements from issuers and investment banks, accountants)
17. 1996 Federal Reserve allowed subsidiaries of bank holding companies to engage in securities underwriting activities up to 25% of their revenue
18. 1996 Market Improvement Act of 1996, P.L. 104-290 – changed the margin account rules (from the onset (1934), loans to market makers and other broker dealers had been excluded from the rules)
    a. Federal Reserve Board interpreted the act as exempting trades among U.S. broker-dealers from Reg. T margin requirements because it had not made a finding that the rules were “necessary or appropriate in the public interest or for the protection of investors” and therefore it had no power to regulate loans to registered broker-dealers[12 CFR 220 et seq.]
        i. amended sec. 7 of the Exchange act (15 U.S.C. 78g) to exclude from margins requirements share borrowing by members of a national securities exchange or registered broker-dealers
            1. “a substantial portion of whose business consists of transaction with persons other than broker dealers” or
            2. to finance their activities as a market maker or underwriter
        ii. according to article “The Market for Borrowing Stock,” page 8, fn. 4, large investors could avoid the margin requirements by booking transactions with offshore domiciled branches of dealers.
    b. repealed section 8(a) of the Exchange Act (15 U.S.C. 78h(a), which limited sources of credit for broker-dealers.
        i. (8)(a) had required broker dealers to borrow only from member banks of the Federal Reserve System, or nonmember banks approved by the Bd. of Governors.
        ii. “[Repeal] allowed nonbank lenders to lend to broker-dealers and market makers, a previously prohibited activity.” Paul Fortune, Security Loans at Bank and Nonbanks: Regulation U (2002)
    c. allowed private placement for purchases by up to 500 investors but required each to be “qualified purchaser.” i.e., individual or family with >$5 million in assets or an investment adviser, trust, or institution with at least $25 million raised from accredited investors
    d. preempted state registration and requirements in offerings of nationally traded securities and all mutual fund securities
    e. preemption of much broker dealer licensing, capital, custody, financial responsibility, and record keeping
        i. SEC regulation of investment advisors with assets under management >$25 million and all those advising mutual funds; state regulation over small advisors in their states, but multi-state investment advisors governed only by laws and rules of its home state
        ii. states always have jurisdiction over fraudulent or deceptive conduct of an investment advisor
19. 1998 Securities Litigation Uniform Standards Act – enacted to prevent evasion of 1995 Private Securities Litigation Reform Act by litigating in state rather than federal court; securities class actions required to be brought in federal court
20. 1998 – Federal Reserve Board adopts rules implementing the 1996 Market Improvement Act of 1996 provisions. (explanations of proposals, comments, and final rules in 63 FR 2806). FRB regulation G, governing securities credit extended by lenders other than banks, brokers, and dealers was merged into regulation U, 12 CFR 221. Regulation U sets out requirements for lenders, other than securities brokers and dealers, who extend credit secured by margin stock. The regulation covers entities that are not brokers or dealers, including commercial banks, savings and loan associations, federal savings banks, credit unions, production credit associations, insurance companies, and companies that have employee stock option plans Margin stock includes any equity security registered on a national securities exchange (such as the NYSE or the AMEX), any over-the-counter security trading in the NASDAQ stock market’s national market, any debt security convertible into a margin stock or carrying a warrant or right to purchase or subscribe to margin stock, and most mutual funds. Maximum loan value has been 50% since 1974. Options/warrants (put and call) have no loan value unless they’re publicly traded; if publicly traded they are “margin stock”
    a. if the borrower is a broker/dealer, lender is exempt from the 50% margin requirement

        i. 1998 rule adoption notice
            1. “Exempted borrowers are being defined to include registered brokers or dealers or members of a national securities exchange who have at least: (1) 1000 active accounts for persons other than brokers, dealers, or persons associated with a broker or dealer; or (2) $ 10 million in annual gross revenues from transactions with such persons; or (3) 10 percent of their annual gross revenues derived from transactions with such persons. These tests will be included in the definition of "exempted borrower" in §§ 220.2 of Regulation T and 221.2 of Regulation U. The Board believes that these tests should not be excessively onerous to satisfy or monitor, but they should exceed the levels that an entity is likely to be willing or able to achieve artificially merely to obtain exempt credit.”
            2. The Board believes that the statutory requirement that a substantial portion of an exempted borrower's business must consist of transactions with persons other than "brokers or dealers" should be interpreted to require that these transactions also be effected with persons other than "persons associated with a broker or dealer" as defined in the '34 Act. n4 This exclusion is included in the Board's definition of "exempted borrower" and will prevent a firm from qualifying as an exempted borrower by engaging in transactions only with related persons and corporate entities.
    b. nonbank lender thresholds (if under threshold, rules don’t apply) – in most recent quarter $200,000 loaned or $500,000 outstanding
21. 1999 -- Gramm Leach Bliley Act , P.L. 106-102
    a. financial holding companies regulated by Federal Reserve Bank could have insurance, as well as banking and securities companies
    b. forced states into reciprocal insurance agent and broker licensing.
    c. 1999-2000 NAIC began a “insurance holding company initiative” under which NAIC formed the “Financial Services Holding Company Analysis/Review/Examination Working Group “in 2000 to (as stated in GAO-01-885R)
    d. 3-9-2001 speech of Laura Unger, acting chairman of SEC, SEC Speaks in 2001, PLI, DC: “GLB opens up the possibility of banks developing new financial products. It establishes a process for the Commission to decide whether banks selling new hybrid securities products must register with the Commission as brokers or dealers. The Act would permit a bank to develop and offer or sell a product that is not clearly an "identified banking product," unless the Commission determines that the product is a security and that public interest considerations would require broker-dealer registration.”
        i. “Under the old Shad-Johnson Accord, the Commission reviewed on a case-by case basis indexes to determine whether they were broad or narrow-based. Because the Shad-Johnson Accord banned futures on narrow-based indexes and single stock futures, this effectively allowed the Commission to veto the designation contract markets.”
22. 2000 -- The Commodity Futures Modernization Act of 2000, Appendix E of PL 106-554 – (instigated by CBOT and Chicago Mercantile Exchange – CBOT had appealed and won suit against SEC when SEC rejected as too narrow trading in futures on the DJ utilities and transportation indices) Repealed Shad-Johnson Accord; lifted the ban on single stock and narrow-based stock index futures; joint regulation of securities futures set up for Commodity Futures Trading Commission and the SEC. The Federal Reserve Board was directed to prescribe rules establishing initial and maintenance customer margin requirements imposed by brokers, dealers, and members of national securities exchanges for security futures products. http://www.sec.gov/rules/final/34-46292.htm#I
    a. Reg. T not completely applied to futures accounts
    b. minimum and maintenance margin levels for unhedged positions in securities futures set at 20% of their current market value
    c. “self regulatory authorities” could set margins levels lower for customers with “strategy-based offset positions involving security futures and one or more related securities or futures.”
        i. approved portfolio managing systems that established margin levels by:
            1. analyzing the risk of each component position in a customer account and recognizing risk offsets in an overall portfolio of positions (across options and futures on the same underlying instrument;); or
            2. analyzing the historical performance of individual instruments, rather than a fixed percentage of current market value

d. the SEC and CFTC determined that “risk-based portfolio margining” for security futures would not be permitted until a similar methodology was introduced for comparable exchange-traded options.
e. initially excluded from margin requirements the financial relations between a foreign branch of a credit and a foreign person involving foreign security features
    1. after comments that foreign futures customers would migrate to foreign offices or competing foreign firms to obtain margin levels available on the foreign exchange, the exclusion was expanded to the U.S. offices as well as foreign branch offices of a securities futures intermediary
    2. after comments, the exclusion was expanded to security futures traded on or subject to the rules of a foreign bd of trade, whether or not the underlying security is issued in the U.S. or a foreign country
f. SEC and CFTC determined that they had authority only over brokers, dealers and members of national securities exchange and their customer margin requirements so that the margin requirements didn’t apply to the margin requirements imposed by clearing agencies on their members – including derivatives clearing organizations registered with the CFTC
g. extended to futures contracts the margin exemption for arrangements between exchange members and registered broker dealers (under reg. T, the borrower is exempted from providing margin and is an exchange member or registered broker dealer a substantial portion of those business consists of transactions with persons other than brokers or dealers)
h. New hybrid exemption from CEA for hybrid instruments that are predominantly a security
i. New exemption for a banking product if the product is a hybrid instrument that is predominantly a banking product
j. expanded the 1974 treasury exemption –no CEA regulation for transactions in foreign currency, government securities, security warrants, security rights, resales of installment loan contracts, repurchase transactions in excluded commodities, and mortgages or mortgage purchase commitments
k. defined “swap agreements” and provided that they are not “securities” for purposes of either the Securities Act of 1933 or the Securities Exchange Act of 1934; swap agreements defined to include “security-based swap agreements” – “a swap agreement of which a material term is based on price, yield, value or volatility of any security or any group or index of securities, or any interest therein”

23. 2002 – Sarbanes-Oxley Act of 2002, P.L. 107-204
    a. failures of Enron, WorldCom et al. prompts focus on accuracy of reporting companies’ balance sheets; off-balance-sheet special purpose vehicles. formation of PCAOB (Public Company Accounting Oversight Board) to oversee auditors of public companies
24. 2005 – [insurance] State Modernization and Regulatory Transparency Act “SMART” draft proposed, never introduced; NAIC and states opposed preemption; not passed
25. 2006/2007—broader preemption than SMART; move to federalize insurance regulation by allowing insurers, like banks, to choose a “national charter”
    a. National Insurance Act of 2006, S, 2509, HR 6225; National Insurance Act of 2007, S 40, HR 3200 – States and NAIC opposed
26. 2006/2007 – move to limit state regulation – like “exporting interest rates” with national banks, would basically export laws of domiciliary state of insurer -- Non-admitted and Reinsurance Reform Act of 2006, HR 5637; Non-admitted and Reinsurance Reform Act of 2007, S. 929, HR 1065, only state of domicile of insured party or reinsurance company regulates nonadmitted insurance and reinsurance carriers and surplus lines companies; mechanism for collecting state premium taxes and allocating income among states.
27. Insurance Information Act of 2008, HR 5840 would create a federal “Office of Insurance Information” within the Department of Treasury
28. National Association of Registered Agents and Brokers Reform Act of 2008, would establish licensing reciprocity for insurance producers that operate in multiple states
29. Insurance considered as part of broader financial industry in need to regulation
    a. March 17, 2009 Senate Banking, Housing, & Urban Affairs Committee hearing “Perspectives on Modernizing Insurance Regulation:” http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=ef3eba4d-5ebb-4c50-910f-68bbbab688e2

(b) Federal tax

(i) pre 1921 – taxed as any other corporation on net income but given a special deduction for net additions to reserves (the treatment of the large life insurance reserves required by state insurance laws was a principle area of dispute); sometimes stated as that they paid tax on both "underwriting income" and on "investment income"
(ii) 1921 – 1942 – the Revenue Act of 1921, 42 Stat. 261, established a separate system for taxing insurance companies based on the premise that it was wrong to tax premiums (underwriting income)(i.e., accretions to wealth) when state law required they be held in reserves for the payment of claims[4]

LIFE INSURANCE PROVISIONS	PROPERTY AND CASUALTY INSURANCE PROVISIONS
life insurance companies were taxed only on investment income (interest, dividends, and rents); conversely no deductions were allowed for claims losses	casualty insurance companies were taxed on both underwriting and investment income, but were allowed a deduction for additions to reserves (reserves were based on unearned premiums and unpaid losses)
the distinction between the life and casualty insurance categorization was based not on gross or net income from lines of business but rather on reserves – if 50% or more of a company's total reserves were life insurance reserves (undefined), they were taxed as a life insurance company	
1942 – Revenue Act of 1942, P.L. , 56 Stat. 798, 867 et seq. -- dealt with case law that had developed from combined life, accident and health policies that distinguished reserves for accident and health insurance based on whether the policy was cancellable ("like" casualty insurance) or noncancellable ("like" life insurance) *the term "life insurance reserves" was defined ** included unearned premiums and discounted unpaid loss reserves on noncancellable health and accident insurance *required life insurance reserves to be based on mortality	
1959 – Life Insurance Company Income Tax Act of 1959, 73 Stat. 112 -- life insurance underwriting income was again subjected to tax *a tax on investment income was combined with a tax on one-half of underwriting income with the remaining underwriting income taxed if and when it was distributed to shareholders; *for insurance companies owned by stockholders (vs. mutual insurers), the untaxed profits were added to a policyholders surplus account ("PSA")	
1962 IRC Subpart F enacted – controlled foreign corporations	
1976 – Tax Reform Act of 1976. Before 1980, life insurance companies could not file a consolidated return with non-life insurance companies	Before 1980, property and casualty insurers could not file a consolidated return with life insurance companies. PC insurers could file consolidated returns with noninsurance companies

[4] U.S. v. Consumer Life Insurance Co., 430 U.S. 725, 742: "Under the early Revenue Acts, all insurance companies were taxes on the same basis as other corporations. Both investment income and premium or underwriting income were included in gross income, although there was a special deduction for additions to reserves. See, e.g., Revenue Act of 1918, § 234(a)(10), 40 Stat. 1079.

By 1921 Congress became persuaded that this treatment did not accurately reflect the nature of the life insurance enterprise, since life insurance is often a form of savings for policyholders, similar in some respects to a bank deposit. See Hearings on H.R. 8245 before the Senate Committee on Finance, 67th Cong., 1st Sess., 83 (1921) (testimony of Dr. T. S. Adams, Tax Adviser to Treasury Department). Under this view, premium receipts "were not true income [to the life insurance company] but were analogous to permanent capital investment." Helvering v. Oregon Mutual Life Ins. Co., 311 U.S. 267, 269 (1940). The 1921 Act therefore provided, for the first time, that life insurance companies would be taxed on investment income alone and not on premium receipts. Revenue Act of 1921, §§ 242-245, 42 Stat. 261. The same rationale did not apply to other forms of insurance, and Congress continued to tax insurance companies other than life on both underwriting and investment income. §§ 246-247."

P.L. 94-455, Sec. 1507(a) (1976), amended IRC 1504 effective for tax. yrs. begin. after 12/31/80. State Farm v. CIR, 119 T.C. 342, 345-346 (2002) "The restrictions sought to ensure that life insurance companies, traditionally profitable, paid income tax commensurate with their investment income, undiminished by the losses of often unprofitable property and casualty companies. Nichols v. United States, 260 F.3d 637, 642 (6th Cir. 2001); Conn. Gen. Life Ins. Co. v. Commissioner, 177 F.3d 136, 138 (3d Cir. 1999), affg. 109 T.C. 100 (1997). Economic considerations, however, led Congress to permit consolidation for years beginning after 1980 in order to "provide[] substantial relief in the future for casualty companies with losses." S. Rept. 94-938 (Part 1), at 454-455 (1976), 1976-3 C.B. (Vol. 3) 49, 492-493; see also TRA 1976 sec. 1507(c), 90 Stat. 1740. At the same time, certain limitations were enacted to "preserve[] the concept sought by Congress in the past to the effect that some tax will be paid with respect to the life insurance company's investment income". S. Rept. 94-938, supra at 454, 1976-3 C.B. (Vol. 3) at 492." Nichols v. U.S., 260 F.3d 637, 642 (6th Cir 2001): "Prior to 1976 and the Tax Reform Act, nonlife insurance companies were prohibited from filing consolidated tax returns with affiliated life insurance companies. S. Rep. No. 94-938 (Part I), at 454 (1976), **reprinted in**1976 U.S.C.C.A.N. 3438, 3881. This prohibition was aimed at ensuring that life companies were taxed on an amount approximately equal to their taxable investment income. **Id.** Congress, however, noted that a recession and inflation in prices had caused casualty insurance companies to incur large losses. **Id.** Whereas casualty insurance companies that were affiliated with nonlife insurance companies were permitted to file consolidated tax returns to offset their losses, casualty insurance companies that were affiliated with life insurance companies were not allowed to file consolidated income tax returns. **Id.** Recognizing that the ban on life-nonlife consolidated tax returns "had been a hardship for casualty companies which are affiliated with life companies," Congress enacted the Tax Reform Act of 1976. **Id.** **"**The Tax Reform Act eliminated the ban on life-nonlife consolidated tax returns. The Act allowed life and nonlife companies that were affiliated to file consolidated tax returns in order to "provide substantial relief in the future for casualty insurance companies with losses," while at the same time, "preserving the concept sought by Congress in the past to the effect that some tax will be paid with respect to the life insurance company's investment income." S. Rep. No. 94-938 (Part I), at 455, reprinted in	2007 – Notice of proposed rulemaking – provision of insurance between members of consolidated group http://www.thefederalregister.com/d.p/2007-09-28-E7-19134

1976 U.S.C.C.A.N. at 3881-82." The Act, however, placed two restrictions on the application of losses from nonlife companies to the income of life companies. First, the Act prohibits the carryback of nonlife losses against life income. See 26 U.S.C. § 1503(c)(1). Second, the Act provides that in order to take advantage of the losses of a subgroup--either as a carryback, carryover, or for the current taxable year--the subgroup must be a member of the affiliated group five or more years. See 26 U.S.C. § 1503(c)(2). Except for these express restrictions, "the details of the computation of the tax liability of an affiliated group which includes life or other mutual insurance companies is [**sic**] to be determined under regulations issued by the Treasury Department." S. Rep. No. 94-938 (Part I), at 456, reprinted in 1976 U.S.C.C.A.N. at 3883.	
1977 – U.S. S Court case addresses history of life insurance tax; treatment of unpaid premiums in determining reserves and income. CIR v. Standard Life & Accident Insurance Co., 433 U.S. 148, (1977) The portion of the unpaid life insurance premium that state law requires a life insurance company to add to its reserves, but not the portion for salesmen's commissions and other expenses such as state taxes and overhead, and profits (loading), held required to be included in a life insurance company's assets and gross premium income, as well as in its reserves, for purposes of computing its federal income tax liability.	
1977 U.S. S Court holds that in determining whether company met 50% "life insurance reserves test" entitling it to beneficial treatment as life insurer, unearned premium (nonlife) reserves held by reinsurer as shown in state filed financial reports not counted U.S. v. Consumer Life Insurance Co., 430 U.S. 725 (1977) ("standard accounting practice in the casualty field, made mandatory by all state regulatory authorities, calls for reserves equal to the gross unearned portion of the premium") FN 20: "The premium charged the policyholder consists of two parts, an expense portion, or "loading," to cover commissions, administrative expenses, and profit, and a claims portion. Only the latter, the net premium or "morbidity" element, represents the company's estimate of what it must now take in and invest to meet its responsibilities as claims arise; that is, only the latter represents the company's risk. The expense portion is relatively fixed. Nearly all of it is paid out, for commissions and administrative expenses connected with issuing the policy, at the time the premiums are received. Since these expenses already have been paid, the only future liabilities for which a reserve strictly is needed are claims. Nevertheless, state insurance departments uniformly require that A&H reserves be set up equivalent to the gross unearned premium. A&H reserves thus stand on a different footing from life insurance reserves, which are typically computed on the basis of mortality tables and assumed rates of interest. See § 801(b). Life reserves contain no loading element."	
1981 tax years – subject to conditions, life insurance companies and nonlife insurance companies can file a federal consolidated return. The Tax Reform Act of 1976, P.L. 94-455, IRC §1507, 90 Stat. 1525, 1739-1741, permitted taxpayers to elect to file a consolidated return that included both life insurance companies and nonlife insurance companies for tax years beginning after December 31, 1980 life insurance company cannot joint in a consolidated return with other types of companies unless it has been a member of the group filing the consolidated return for the preceding 5 taxable years. losses of nonlife companies cannot be taken into account in determining the income of life insurance companies if the nonlife companies sustaining the losses have not been members of the group for at least five taxable years. Because congress was concerned that life companies whose premium income already	

enjoyed tax protection under the Code would also avoid tax on investment income by offsetting it against nonlife loss. Joint Com. on Taxation Staff, Summary of Tax Reform Act of 1976, 1976-3 C.B. 448, even if this condition is satisfied, only a limited portion of the nonlife company's loss can be offset against the income of the life insurance companies in the group (35% of lesser of income of the life insurance companies in the group or the offsetable nonlife consolidated NOL)	
1984 – Deficit Reduction Act of 1984, new system for taxing life insurance companies adopted based on -- "life insurance company taxable income" life insurance gross income (premiums, decreases in reserves, other amounts) minus life insurance (IRC 805) deductions; small life insurance company special provisions; alternative tax for capital gains; special rules for segregated variable contract reserves; tax-exempt interest and dividends received dealt with in proration formula used in computing net increase or decrease in reserves	1984 - IRC 845 enacted which authorizes Treasury to reallocate items and make adjustments in reinsurance transactions to prevent tax avoidance or evasion
Tax Reform Act of 1986 –all income of captive foreign corporations engaged in insurance except underwriting income from same country risks was subjected to immediate tax- applied to all insurance – life and casualty.	1986 -- Tax Reform Act of 1986 *repealed special rules for "mutual" property and casualty insurance companies *required property casualty insurers to discount unpaid losses to present value in deducting them *finding that it was inappropriate for the companies to fund fully deductible loss reserves with investment income that might be exempt from tax, the reserve deductions was reduced by 15% of the tax-exempt interest or the deductible portion of certain dividends received Taxable income is the sum of its gross income from underwriting income and investment income (determined on basis of NAIC annual statement) and other income, less allowable IRC 832 deductions (including reinsurance premiums)
1989 U.S. S Ct Case – reinsurance – upfront ceding premium paid to primary insurer is not fully deductible by the reinsurer in the year paid; it is payment for an income producing asset and must be amortized over the asset's life. Colonial American Life Insurance Co. v. CIR, 491 U.S. 244(1989)	
	1997 – finding it was also inappropriate to let insurance companies fund the fully deductible loss reserves with income that was tax-exempt or deferred through inside build-up on some annuity, endowment and life insurance contracts, the 15% proration rule was expanded to apply to the inside buildup
1997 CFC exceptions for insurance enacted; subsequently extended to 2007 (JCX-47-08) From 2002 annual meeting of actuaries, "Subpart F and the Foreign Tax Credit – Life Insurance Company Provisions" **1. "Surplus" surplus** There has been considerable governmental concern that companies would load up foreign subsidiaries with capital, and utilize an insurance "wrapper" to exclude all of the income of an insurance CFC. Hence, statutory limits were imposed on exclusion of income attributable to	

surplus, *i.e.*, statutorily defined as amounts up to 10% of reserves for life companies, and 1/3 of premiums for P/C companies. Although statistically sound in general, the limitations do not take into account a variety of special cases, including high capital requirements of P/C reinsurers, and the large capital relative to reserves required by life companies in their early years."	
2004 – American Jobs Creation Act of 2004, P.L. 108-357 1. IRC 7874 -- tax is imposed on income and gain of expatriated entities and their foreign parents	2004 – American Jobs Creation Act of 2004, P.L. 108-357 1. IRC 845 - authority of Treasury to reallocate reinsurance items expanded to include amount, not only source and character of item 2. IRC 7874 -- tax is imposed on income and gain of expatriated entities and their foreign parents
2005 Tax Increase Prevention and Reconciliation Act of 2005. CFC exception extended. U.S. shareholders that own 10% or more of stock in controlled foreign corporation (owned 50% [25% if insurance] or more by U.S. persons) are, under the CFC rules, taxed currently (rather than when receive dividends) on insurance income and foreign base company income 2005 act extended the temporary extensions for exempt insurance income (non U.S. risks) and active banking and financing income for two more years. Active business exception applied to institutions licensed to do business as a bank in the U.S. or be engaged in active conduct of a securities business and be registered as a securities broker or dealer under the SEC	
	2007, September 26, 2006, select international tax issues, Senate Committee on Finance, Joint Committee on Taxation, JCX-85-07 Reinsurance; 1. premiums ceded for reinsurance are deductible in determining a company's federal income tax (IURC 832(b)(4) 2. if reserves and reserve assets are transferred to the reinsurer, the tax liability for the earnings is also shifted to the reinsurer 3. if the reinsurer is in a no or low tax foreign jurisdiction, earnings not subject to federal income tax 4. reasons for reinsurance: -shift risk because pool of risks is too concentrated -lower ratio of net premiums to surplus so can write more insurance under state regulatory guidelines- -enter new line of business -exit a line of business 5. Property and casualty insurers use offshore parent company -- 1. [Berkley statement] Foreign domiciled insurers with U.S. affiliates can strip profits from underwriting and investment activities out of U.S. tax base by reinsuring with offshore affiliate and paying a 1% excise tax on the reinsurance premiums paid from the U.S. member to its offshore affiliate a. competitive advantage, particularly for commercial liens and financial guarantee insurers where loss reserves are held for an extended

	period of time and generate substantial investment income ("long-tail lines of business") 2. [Kramer testimony] a. 1980s U.S. crisis in liability insurance due to market shortages following unexpected losses b. US companies pooled resources to form Bermuda ACE and XL to sell "specially crafted, excess liability insurance products" to meet their collective needs 1. 3 other recent crises that fed into offshore reinsurance a. Hurricane Andrew 1992-1994 b. World Trade Center bombing market turmoil 2001 & 2002 c. Hurricane Katrina, Rita and Wilma 2005
	Current - 2009 Reinsurance Hearings, Senate Committee on Banking, Housing and Urban Affairs, March 17, 2009, Perspectives on Modernizing Insurance Regulation: http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=ef3eba4d-5ebb-4c50-910f-68bbbab688e2
Current tax 1. Life insurance Company Taxable Income is basis for federal tax +Life insurance gross income (premiums, decreases in reserves, and generally includable gross income) -Life insurance deductions in 805 and small life insurance company deduction in 806 2. Alternative capital gains tax feature 3. Decrease in net reserves increases income subject to tax, increase in net reserves decreases income subject to tax -NAIC determines how reserves are determined -downward tax-exempt income adjustment in reserve calculations 4. IRC 4371 Excise tax payable by foreign insurer or reinsurer (with no effectively connected business) on insurance or reinsurance of U.S. risks – 1% of life insurance, sickness and accident policies and annuity contracts; also 1% if reinsurance 5. Controlled foreign corporation rules impose a tax on ≥10% U.S. shareholders on CFC income, including any income attributable to -issuing or reinsuring any insurance or annuity contract in connection with risks located in a country other than the CFC'c country of	Current tax 1. Gross income from underwriting income (premiums earned less losses and expenses incurred [including discounted unpaid losses]) and investment income and generally includable gross income; premiums paid for reinsurance are deductible 2. Company with <$1.2 premiums can elect to be taxed only on taxable investment income 3. Property and casualty insurance company with gross receipts <$600,000 whose premiums 50% of gross income are exempt from federal tax 4. IRC 4371 Excise tax payable by foreign insurer or reinsurer (with no effectively connected business) on insurance or reinsurance of U.S. risks – 4% of property and casualty & indemnity bond premiums; 1% if reinsurance 5. CFC tax rules apply to insurance; now operating under exceptions last extended in 2007

organization, and -risks located in the CFC's country of organization as a result of an arrangement under which another corporation receives a substantially equal amount of consideration for insurance of the other country risks, and -investment income allocable to insurance or annuity related to risks outside CFC's country of organization - now operating under exceptions that benefit insurance companies for insurance and "active" financial income last extended in 2007	
Other: 1. Life insurance highly leveraged. (NYT, 4-9-2009, Questions Over Bailout for Insurers, Mary William Walsh) - TARP recipients, AIG - now holds 18% of all US corporation bonds as well as big blocks of commercial mortgages and government bonds 2. March 17, 2009 Testimony of Frank Keating, Senate Banking, Housing, & Urban Affairs Committee hearing "Perspectives on Modernizing Insurance Regulation". Life insurers: • are largest U.S. source of corporate bond financing and hold approximately 18% of total U.S. corporate bonds. • hold about 22% of all private employer-provided retirement assets • pitch to preempt state regulation	Other: 1. Property/casualty insurance, not highly leveraged like life insurance. No PC company applied for TARP $$ (NYT, 4-9-2009, Questions Over Bailout for Insurers, Mary William Walsh) 2. Extensive use of reinsurance 3. March 17, 2009 Testimony of William Berkley, Senate Banking, Housing, & Urban Affairs Committee hearing "Perspectives on Modernizing Insurance Regulation, http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=ef3eba4d-5ebb-4c50-910f-68bbbab688e2 " property-casualty insurance" • accounts for $535 billion in capital, • purchases $370 billion of state/municipal bonds • pays $250 billion annually in claims • pitch to preempt state regulation 4. Financial guaranty insurance falls within this generally classification of insurance FASB 163 –accounting for financial guarantee insurance contracts, interpreting FASB 60 5. FASB started project in 2006 related to insurance "risk transfer." June 2008, Board removed the insurance risk transfer project from its agenda because it plans to consider at a future date whether to address insurance accounting in a joint project with the IASB 6. May 2007 - IASB issued *Preliminary Views on Insurance Contracts,* for public comment setting out its preliminary views. August 2007, FASB issued *An FASB Agenda Proposal: Accounting for Insurance Contracts by Insurers and Policyholders Including the IASB Discussion Paper,* Preliminary Views on Insurance Contracts for public comment: http://www.iasb.org/Current+Projects/IASB+Projects/Insurance+Contracts/Insurance+Contracts.htm 7. FASB Statement 113 Accounting and Reporting for Reinsurance of Short-Duration and Long-Duration Contracts, http://72.3.243.42/st/summary/stsum113.shtml 8. Seminal - what is insurance case: Helvering v. LeGierse, 312 U.S. 531. 9. Property/casualty insurance, not highly leveraged like life insurance. No PC company applied for TARP $$ (NYT, 4-9-2009, Questions Over Bailout for Insurers, Mary William Walsh)

	10. IRS hitting captives from different direction -- September 2007, NPRM-Reg-107592-00 Treasury noticed proposed rules one of which would prevent a captive from taking a deduction for loss reserves until it paid the related affiliate's loss: "The proposed regulations provide that when a significant portion (five percent or more) of the business of the insuring member arises from insuring the risks of other members, either by issuing insurance contracts directly to members or by reinsuring risks on contracts issued to members, it is appropriate to take into account the items from the intercompany transactions on a single entity basis. In such cases, the treatment of the members' items from the insurance transactions would be subject to the matching and acceleration rules of Reg. §1.1502-13. Under these rules, the insured member's deduction and the significant insurance member's income from the transaction would generally be taken into account currently. However, the effects of the intercompany transaction would otherwise be treated in a manner comparable to "self-insurance" by a single corporation." Law Firm (Pepper Hamilton LLP) comment: "Under the current rules for captive insurance companies, domestic captives (and foreign captives that elect under Section 953(d) to be treated as a domestic captives) generally qualify for certain insurance-related federal income tax benefits. [2 *See* Rev. Rul. 2002-89, 2002-2 C.B. 984; Rev. Rul. 2002-90, 2002-2 C.B. 984; Rev. Rul. 2002-91, 2002-2 C.B. 991.] In a typical setting where the captive is a member of an affiliated group of corporations filing a consolidated return for federal income tax purposes (a consolidated group), the premium payer, also a member of the consolidated group, deducts the premium payment and the recipient captive includes the premium in income. Under the current rules the captive may apply favorable tax rules related to insurers under which the captive establishes and deducts certain reserves for federal tax purposes, including a loss reserve. [3 *See* Section 832(b)(5).] The net result for a consolidated filer is to defer a portion of the premium recognized by the captive insurance member."
For state income tax purposes, Insurance companies are the equivalent of "tax indifferent parties" or "tax-exempt parties" under federal tax avoidance analyses. http://www.irs.gov/businesses/corporations/article/0,,id=120633,00.html Notice 2008-34 Distressed asset trust transaction (tax indifferent party) Notice 2003-54 Common trust fund straddle tax shelter Notice 2005-13 Tax-exempt leasing involving defeasance Revenue Ruling 2002-69, Lease-in lease-out transactions Notice 2005-13 Sale-in lease-out transactions	

The federal insurance tax rules do not apply unless the entity is an insurance company in that tax year;

> "The term 'insurance company' means a company whose primary and predominant business activity during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks

underwritten by insurance companies. Thus, though its name, charter powers, and subjection to State insurance laws are significant in determining the business which a company is authorized and intends to carry on, it is the character of the business actually done in the taxable year which determines whether a company is taxable as an insurance company under the Internal Revenue Code." 26 C.F.R. 1.801-3(a)(1)

This regulation language derives from *Bowers v. Lawyers Mortgage Co.*, 285 U.S. 182, 189 (1932), which held that a company, which loaned money and also guaranteed payment of mortgages it assigned, although subject to state insurance regulation, was not an insurance company, insurance not being its primary business and state regulation not being determinative.

IRS fought captive insurance issue for many years, adopting a "economic family" theory for denial of deduction, Rev. Rul. 77-316, but gave that position up in Rev.Rul. 2001-31. Proposed rules in 2007 addressing captives in consolidated return group – no deduction for premium until loss paid

MISCELLANEOUS ITEMS

GAO-01-948, Insurance Regulation, the NAIC Accreditation Program Can be Improved, August 2001

GAO/GGD-00-198, Insurance Regulation: Scandal Highlights Need for Strengthened Regulatory Oversight

GAO/T-GGD, Insurance Regulation: Assessment of the National Association of Insurance Commissioners, May 22, 1991

GAO-T-GGD-92-13, Feb. 18, 1992 Insurance Regulation: The Failures of Four Large Life Insurers – Holding companies are a regulatory blind spot

GAO-GGD-89-128 Sept. 1989. Insurance Regulation: Problems in the State Monitoring of Property/Casualty Insurer Solvency

GAO-DDG-90-82 May 1990 Insurance Regulation: State Reinsurance Oversight Increased, but Problems Remain

GAO/T-GGD-91-37 May 22, 1991. Insurance Regulation: Assessment of the National Association of Insurance Commissioners

GAO-GGD-95-95 mar. 1995 Insurance Regulation: Observations on the Receivership of Monarch Life Insurance Company. States did not regulate either the parent holding companies or the non-insurance affiliates and subsidiaries of the failed insurers

GAO-09-216 Financial Regulation – A Framework for Crafting and Assessing Proposals to Modernize the Outdated U.S. Financial Regulatory System.

Group of 30 – 1/15/2009 "Financial Reform: A Framework for Financial Stability"

National Organization of Life and Health Insurance Guarantee Associations: http://www.nolhga.com/

The National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) is a voluntary association made up of the life and health insurance guaranty associations of all 50 states, the District of Columbia, and Puerto Rico. NOLHGA was founded in 1983 when the state guaranty associations determined that there was a need for a mechanism to help them coordinate their efforts to provide protection to policyholders when a life or health insurance company insolvency affects people in many states.

State guaranty associations provide coverage (up to the limits spelled out by state law) for resident policyholders of insurers licensed to do business in their state. NOLHGA assists its member associations in quickly and cost-effectively providing coverage to policyholders in the event of a multi-state life or health insurer insolvency.

When an insurer licensed in multiple states is declared insolvent, NOLHGA, on behalf of affected member state guaranty associations, assembles a task force of guaranty association officials. This task force analyzes the company's commitments to policyholders; ensures that covered claims are paid; and, where appropriate, arranges for covered policies to be transferred to a healthy insurer.

The task force may also support the efforts of the receiver to dispose of the company's assets in a way that maximizes their value. When there is a shortfall of estate assets needed to pay the claims of covered policyholders, guaranty associations assess the licensed insurers in their states a proportional share of the funds needed.

State-by-state data is available at: http://www.nolhga.com/factsandfigures/main.cfm/location/lawdetail/docid/16

"The Market for Borrowing Stock," Gene D'Avolio, Graduate School of Business Administration, Harvard University: http://www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6VBX-473MBMS-6&_user=2880175&_rdoc=1&_fmt=&_orig=search&_sort=d&view=c&_acct=C000059037&_version=1&_urlVersion=0&_userid=2880175&md5=b473c3826b56591c4f7bc7c9fa4e8cf3

March 17, 2009 Senate Banking, Housing, & Urban Affairs Committee hearing "Perspectives on Modernizing Insurance Regulation:" http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=ef3eba4d-5ebb-4c50-910f-68bbbab688e2

Short tail and long tail lines of business
Short tail – paid out relatively quickly after the risk is incurred

- automobile liability, health insurance

Long-tail-longer pay out periods

- medical malpractice; workers' compensation
  - relatively high proportion of unpaid losses following first years of coverage
  - tax benefits of reinsurance with offshore affiliate greater (reserves held longer)

2007, September 26, 2006, select international tax issues,
Senate Committee on Finance, Joint Committee on Taxation, JCX-85-07
Reinsurance, page 5: "ART" (alternative risk transfer products are discussed as a way outside of reinsurance that risks can bet transferred)- term has been applied to self-insurance, captive insurance, sidecar reinsurance, finite risk insurance, or reinsurance, capital markets financings, such as catastrophe ("cat") bonds, and weather derivative contacts.

A Guide to Captive Insurance Companies (Part 1), William P. Elliot, Journal of International Taxation, Apr. 2005: http://www.decosimo.com/downloads/GuidetoCaptiveInsuranceCompanies698.pdf

Life/nonlife consolidated returns 26 CFR 1.1502-47 http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=cf220b1106c9a62aa41ee5f59890504e;rgn=div8;view=text;node=26%3A12.0.1.1.1.0.15.130;idno=26;cc=ecfr

Public comment site for related reinsurance legislation proposals:
http://finance.senate.gov/sitepages/Reinsurance%20Documents.htm