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Department of Insurance

DOMESTIC/FOREIGN INSURERS BULLETIN NO. 7

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**TO: All Domestic and Foreign Insurers Licensed in the State of Delaware
All State Insurance Departments
National Association of Insurance Commissioners**

NOTICE OF CHANGE IN POLICY REGARDING RETALIATORY TAX CALCULATION

Beginning with tax year 2000, and henceforth, credits provided under 18 Del. C. §4219 and/or 18 Del. C. §4413 for Guaranty Fund payments will no longer be factored into the retaliatory tax calculation. The Delaware Department of Insurance has adopted this change pursuant to the Commissioner's rulemaking authority as set forth in Chapter 3 of Title 18, Delaware Insurance Code.

BACKGROUND

In 1991 the Delaware Department of Insurance through an administrative directive (the "Directive") changed the way retaliatory taxes are calculated by changing the tax form and instructing taxpayers to not apply a credit for guaranty fund assessments if their home state had no premium tax offset for such assessments.

Since that change, questions have arisen as to whether that way of calculating retaliatory taxes properly applies the "retaliatory tax" provisions of 18 Del. C. §532. Three separate administrative appeals were filed in the Superior Court of the State of Delaware from a Final Order and Decision of the Commissioner, dated August 17, 1998, and from the Proposed Order and Recommendation of the Hearing Officer, dated February 11, 1998, to the extent it was adopted by the Commissioner in the Final Order and Decision. Those appeals were consolidated into one action by order of the Honorable Norman A. Barron, dated December 2, 1998, and designated as C.A. No. 98A-09-12 (NAB) (the "Retaliatory Tax Appeal"). Such consolidated action now has been settled and dismissed, with the prior administrative rulings vacated. Although no final decision was made on the issues involving the proper interpretation 18 Del. C. §532, in order to reach a settlement, the Department has agreed to prospectively reverse the 1991 Directive and to support clarifying legislation next year.

GENERAL PROCEDURE

Beginning with the calendar year 2000 Annual Premium Tax and Fees Report, the tax forms will be changed to remove credits for Guaranty Fund payments from both the Delaware basis and Home State basis calculations on the Retaliatory Taxes and Fees Working Form. Taxpayers will be instructed on the new form to calculate retaliatory tax using gross tax amounts as determined according to 18 Del. C. §702.

The Department will not assess any taxpayer any unpaid retaliatory tax arising under the Directive for open tax years 1991 through 1999; however, the Insurance Commissioner reserves the right to correct errors resulting in underpayment or overpayment of insurance taxes, including retaliatory tax, for tax years 1991 through 1999, which did not arise as a result of the Directive.

The rights and responsibilities of insurers who were parties in the Retaliatory Tax Appeal are resolved by the settlement thereof under the terms of the Settlement Agreement entered into by the parties to that litigation, dated as of August 1, 2000. Insurers not parties to the Retaliatory Tax Appeal will prospectively have the benefit of this Bulletin for the year 2000 and thereafter, but shall not be entitled to any refund based on the Directive in effect from 1991 through 1999. By adopting this new Rule and complying with the Settlement Agreement, the Department intends to put to rest and settle any and all disputes and controversies that have arisen or could have arisen out of the Retaliatory Tax Appeal or any similar actions regarding the 1991 Directive.

Except for matters addressed in the Settlement Agreement, this Rule supercedes, replaces and cancels all other prior representations and agreements regarding any issues raised or that could have been raised in the prior administrative proceeding and the Retaliatory Tax Appeal.

Donna Lee H. Williams
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Dated: _____