JLT Towner Update

Keeping Up With Dodd-Frank

by Thomas P. Stokes

(October 24, 2012)— More than two years ago, the Nonadmitted and Reinsurance Reform Act (NRRA) was signed into law as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. During this time, JLT Towner has offered its opinion that Dodd-Frank was and continues to be a work in progress. To date, it hasn't come close to flushing out some very thorny issues about captives.

Captive owners and managers are talking about these issues more frequently. Of particular concern to the captive industry is how states will interpret the business conducted by captive insurance companies. There is, as we have stated in the past, incentive for states to include captives because this premium represents a potential new revenue source.

Original intent needs clarification
While captives are generally assessed premium taxes only in their "state of domicile," Dodd-Frank has rekindled long-standing questions about whether states where the parent companies reside or the state in which the insurance is bought can also assess tax. How much? Who will distribute a share of this tax to whom? Can or will domiciles charge insurance premium taxes that can be markedly higher than taxes now imposed on captive insurance premiums?

Many captive experts believe that the intent of Dodd-Frank does not anticipate the business of captive insurance. Regardless, the legislation leaves interpretation and implementation to the states. To date, no clear mandates or uniformity of opinion of how captive owners should react have emerged.

While provisions already exist in many states to assess self-procurement taxes on captives, the laws are arcane and confusing. It may be tempting for some captives to switch domiciles in response to recent developments, but acting prematurely can be costly and ineffective. The bottom line is to monitor developments such as these, then do a thorough analysis to determine if and when action is needed:

- Several states have indicated that their initial analysis would include captives in the definition of entities subject to the provisions of NRRA.

- Some states have joined compacts that would provide for sharing of taxes collected among the states. Others, including Connecticut, joined and withdrew from the compact pending further study.

- Dodd-Frank may have intended for states to jointly develop a system to fairly collect and distribute premium taxes, but such cooperation is looking less likely unlikely. Congress may have to legislate a tax-sharing methodology to end this confusion.

Your captive's next step

The bottom line is that without federal clarification of Dodd-Frank, captive owners can do little more at this point than keep a close eye on the actions of the states in which they conduct the bulk of their business activities.

JLT Towner recommends that captive owners continue to monitor federal developments with the realistic view that nothing will occur until well after the elections in November. Because the various states often act autonomously and in their own best interests, some arbitrary and unintended results can occur.

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JLT Towner Group US is an independent, full-service captive insurance management and captive consulting company with a multi-domicile reach. A partner of Hanover Stone Partners, LLC, JLT Towner is dedicated to providing alternative risk solutions to meet diverse needs.

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