TxCIA 2024 Conference Presentation

Texas as a Captive Domicile

Texas Captives - History

- Texas Adopted its captive statute in 2013 and has improved it subsequent Legislative sessions with the help of the Texas Department of Insurance ("TDI") and the Texas Captive Insurance Association ("TxCIA).
- Unlike many jurisdictions, Texas interest is not in creating a captive insurance industry like Vermont but in creating and effective and efficient opportunity for Texas businesses to take advantage of this valuable risk management tool.
- As a result, Texas captives are required to have a "Nexus to Texas" or a substantial business presence in Texas.
- When it was clear that Texas would adopt a captive law we organized the TxCIA to provide support for the Texas captive program and assist TDI in the development of its rules and forms and the education of its staff.

Texas Captives - Requirements

Types of Captives: Pure only – Parent, Affiliates and Controlled Unaffiliated Business

Form of Entity: Captive may be a corporation, LLC or other type of entity.

Texas Specific Requirements:

- Conduct a significant portion of their business in the state of Texas.
- Hold one board meeting in the state of Texas.
- Have at least one Texas Resident Director.
- Maintain books and records in Texas unless otherwise approved.

Board Requirements: Minimum of 3 directors/managers

Texas Captives – Minimum Capital/Accounting/Lines of Business

- Minimum statutory capital for a single parent captive in Texas is $250,000.
- More may be required based on risk retained and other factors.
- Capital may be:
    1. Cash or Cash Equivalents
    2. Letter of Credit
    3. Federal or Texas state, county or municipal bonds
- Cash can be loaned back to the Parent

Basis of Accounting: GAAP only.

Insurance Prohibited:

No Direct Life, Health, Annuities, Mortgage Financial Guaranty or Workers Compensation.

No Personal Lines.

Texas Captives – Requirements

- Captive can be managed by:
  - Captive manager registered with TDI
  - Parent or affiliate with demonstrated expertise

- Application generally requires:
  - Identification of affiliates to be insured
  - Identification of risks to be insured
  - Business Plan which describes flow of funds, reinsurance and policy forms
  - Identification of officers, directors, captive manager, auditor and actuary

Texas Captives – Ongoing Requirements

Annual Audit: Due by 6/1 or 5 months after the fiscal year end unless waived.

Annual Captive Report: Due 3/1 or 2 months after the fiscal year end.

Annual Actuarial Report: Due 3/1 or 2 months following the fiscal year end unless waived.

Other Reports:

Reporting of changes in officers and directors or other changes in Application information within 30 days and prior approval by TDI of major changes such as adding new coverages or changing retentions.

Examinations:

Examinations every 3-5 years and all done by one of the TDI field offices.

Texas Captives – Our Experience

- Most captives are deductible reimbursement coverages.
- Captives appear to be cost effective without regard to income taxes for companies with substantial property and casualty premiums; especially if there is a significant, surplus lines or independently procured portion of the portfolio.
- Increases in deductibles and coverage for currently uncovered (self-insured) losses seem to be the primary advantage in lowering costs and risk.
- Very supportive regulators and legislators.
- TxCIA

Texas State Taxes

Texas Insurance Premium Taxes

- Admitted Insurer Premium Tax – 1.6% of gross premium
- Surplus Lines Premium Tax – 4.85% of gross premium
- Independently (Self) Procured Premium Tax – 4.85% of premium paid
- Unauthorized Insurance Premium Tax – 4.85% of premium paid
- Captive Insurance Premium Tax - .05% of taxable premium

Unauthorized Insurance Premium Tax

The Basics

- Essentially a tax on all other insurance premium related to Texas risks but does not fall under the other taxable situations
- If the insurance is not placed with an admitted company, an eligible surplus lines insurer or a licensed captive, it is unauthorized
- The tax has been part of the Texas unauthorized insurance law since it was adopted in 1967
- It has usually been applied to unauthorized insurance schemes that were essentially fraudulent operations

Texas Insurance Maintenance Taxes

- Captives are subject to Texas maintenance tax scheme like all other licensed insurers
- Tax pays for the regulation of insurance, by line, based on the allocated cost of regulation the previous year
- Comptroller has provided a breakdown of captive business by taxable line of business to tell by which tax dates apply
- Rate is applied to gross premium for the prior year
- Also due March 1 of the following year

Texas Captive Insurance Company Maintenance Taxes by License and Annual Statement Line

Lines of authority as set forth on the Captive insurance company certificate of authority	Maintenance tax line	Tax Rate
Reimbursement Policy	Casualty and Fidelity	.0008
Employee Benefit A&H	Life, Accident & Health	.0004
Other Casualty	Casualty and Fidelity	
Commercial Auto Liability	Motor Vehicle	.0006
Contractual Liability	Casualty and Fidelity	
General Liability	Casualty and Fidelity	
Products Liability	Casualty and Fidelity	
Property Damage Liability	Fire and Allied Lines	.0034
Professional Liability	Casualty and Fidelity	

Determining Texas Tax

For new or renewal policies procured directly from a nonadmitted insurer when Texas is the home state of the insured:

- 100% of the tax is due Texas on a policy that covers risks in Texas only.
- 100% of the tax is due Texas on a policy that covers risks in more than one state.
- If Texas is the home state of the insured but the policy covers risks that are 100% located outside of Texas, then the state to which the greatest percentage of the premium is allocated becomes the home state. The policy would then be subject to regulation and taxation by that home state and not by the state of Texas.

How to move your Captive to Texas

Re-Domestication / Re-Domiciliation

- Moving a captive from one domicile to another is referred to as re-domestication or re-domiciliation.

- Usually Re-domestication refers to the movement from an offshore domicile such as Cayman or Bermuda.

- Re-domiciliation refers to the movement from one US domicile to another i.e. Vermont to Texas.

From Where?

The Texas captive law provides for the re-domestication / domiciliation of captive insurers from domestic and foreign domiciles.

We have handled redomestications from Vermont, Arizona, Nevada and Delaware.

We have also moved companies from Bermuda and Cayman

Why Move?

- Our experience has been that re-domesticating insurers find the financial and the reporting requirements of Texas law compatible with those of their current jurisdictions, if not better.

- The most common advantage of re-domestication is reduction in expenses. Our clients have reported elimination of expenses and other savings exceeding $200,000 per year.

Show me the Money!

- Texas law does not mandate a Texas lawyer or other representative on the board

- Texas law requires at least one meeting in the state each year, but since the company is Texas based this saves travel time and expenses in other domiciles

- Premium tax savings. Texas premium tax is 0.5% up to a maximum of $200,000 and re-domesticating companies can request a waiver of the tax for up to 2 years

- Elimination of exposure for the unauthorized insurance tax / self procurement tax of 4.85%.

Other Reasons

- Some of our clients the perception of management is enhanced when doing business in Texas.

- Removed the boondoggle accusations from management and employees!

- Re-domestication resolves any concerns about where they are doing business and enhances transparency.

What do we need to do?

- The re-domestication process begins with an informal meeting with TDI to discuss the business plan and capitalization of the captive to insure the feasibility of the captive program under Texas law.

- Once the plan is ready, the documents to re-domesticate the entity are prepared and filed with the TX Secretary of State. Re-domestication is legally a conversion of the entity from its domicile to a TX entity. It requires approval of the current domicile and filing of compliant forms with the domicile's SOS.

Questions

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