

SALUTARY EFFECT OF THE RETALIATORY TAX IN PROMOTING ECONOMIC DEVELOPMENT OF THE INSURANCE INDUSTRY IN IOWA

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Many states have what is known as “retaliatory” statutes, designed to protect their domestic insurance industry from excessive taxation in other states.¹ In essence, the statutes subject out-of-state insurers to the same prohibitions, limitations, taxes, license fees, and other “burdens” as their home state applied to insurers domiciled in the retaliating state.² This includes premium taxes and means that a domestic insurer of state X pays the same premium tax rate in all states as state X charges out-of-state companies doing business within its borders. The United States Supreme Court has found this consistent with equal protection of the laws, because the retaliating state has a legitimate interest in protecting its own domestic industry in this fashion, even though a company from state X doing business in state Z may pay a different tax rate than a company from state Y pays in state Z.³ However, by virtue of equal protection of the law, domestic and foreign insurers must be charged the same premium tax rate.⁴

As recently as 20 years ago, premium tax rates discriminating against foreign companies were common. The *Ward* decision ended this by finding that a differential rate for domestics and foreign companies failed a rational basis test, there being no legitimate state interest behind such a difference. Since then, states differentiating have abandoned their discriminatory taxes and, by virtue of the unrestrained effect of the retaliatory tax, premium tax rates have fallen across the nation. In other words, when a key insurance state lowers its premium tax rate, it causes a ripple effect among other states in lowering theirs.

Recognizing that its premium tax at a two percent level was beyond that of several surrounding states and with an eye to the competitiveness of its extensive domestic industry, the State of Iowa lowered its rate in 2002 in a series of phased-in steps to a level of one percent by 2006 for life and health insurers and 2007 for property and casualty insurers.⁵ Doubtless, other states will have to follow this if they expect to keep their domestic insurance industry competitive by giving it the opportunity to control this segment of its costs derived from taxation. It is the salutary effect of the retaliatory tax which compelled the Iowa legislature to reduce its premium tax rate in order to meet its goal of keeping the Iowa insurance industry competitive.

Endnotes

1. Couch On Insurance, 3rd Sec. 3:35, at 3-51.
2. *Id.* at 3-51, 52.
3. *Western and Southern Life Ins. Co. v. State Board of Equalization*, 451 U.S. 641, 101 S. Ct. 2070, 68 L. Ed. 2d 514 (1981).
4. *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869 105 S. Ct. 1676, 84 L. Ed. 2d 751 (Iowa 1985).
5. 2002 Iowa Acts ch. 1158, Secs. 3, 5.