

INSURANCE TAX AMENDMENTS



**House
Legislative
Analysis
Section**

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Senate Bill 429 as passed by the Senate
Sponsor: Sen. Norman D. Shinkle

Senate Bill 430 as passed by the Senate
Sponsor: Sen. Doug Carl

First Analysis (9-26-90)

Senate Committee: Finance
House Committee: Taxation

THE APPARENT PROBLEM:

In 1987, Michigan's system of taxing insurance companies was ruled unconstitutional by the Michigan Court of Appeals on the grounds that domestic (in-state) companies were treated far more generously than foreign (out-of-state) companies. Foreign insurers had to pay a premium tax while domestic insurers were subject to the much less burdensome single business tax (SBT). A new tax scheme was developed, aimed at "leveling the playing field," under which all authorized insurers paid a new special tax on gross receipts under the Single Business Tax Act. Foreign insurers, however, are also subject to the so-called retaliatory tax, which treats foreign companies the way Michigan companies would be treated in their home states. Foreign insurers pay either the SBT levy or the retaliatory tax, whichever is higher. As the new tax system has been implemented, certain administrative difficulties have arisen, say tax officials, particularly in the coordination of the SBT and the retaliatory tax. The former is administered by the treasury department, the latter by the insurance bureau, and the taxes are paid on different calendars. There has also been a dispute between the treasury department and insurance companies over how to calculate for the tax years 1989 and 1990 credits that lower an insurance company's tax liability. Companies are allowed a credit for contributions to state-mandated, industry-sponsored guaranty associations and placement facilities up to certain limits. Treasury and the industry have reached an agreement on this issue and other changes in the insurance tax system have been proposed to improve its administration.

THE CONTENT OF THE BILLS:

Senate Bill 429 would amend the Single Business Tax Act and Senate Bill 430 would amend the Insurance Code, and together they would bring the administration of the insurance tax system (both the single business tax and the retaliatory tax) under the jurisdiction of the Department of Treasury, make the payment calendar for both insurance taxes the same, and make both subject to the penalty provisions of the Revenue Act.

Senate Bill 429 would amend the Single Business Tax Act (MCL 208.22c and 22f) to:

- Specify that for 1989 the insurance company facility assessment credits would be set at 40.366 percent of assessments paid.
- Make the tax year for insurance companies the calendar year (rather than October to October) and establish a

transition tax year that would run from October 1, 1990 to December 31, 1991.

- Require insurance company annual returns to be filed by March 1, which is the date the retaliatory tax annual return must be filed and eliminate the automatic extension of time to file annual returns. (Extensions could be granted under special circumstances by the revenue commissioner.)
- Require the state treasurer to certify the amounts needed to calculate allowable insurance company credits by June 30.
- Make the single business tax returns of insurance companies a public record as is the case for retaliatory tax returns.

Senate Bill 430 would amend the Insurance Code (500.134 et al.) to:

- Place the administration of the retaliatory tax under the jurisdiction of the Department of Treasury under the provisions of the revenue act.
- Make the provisions regarding payments of estimated tax for the retaliatory tax consistent with those of the single business tax.
- Allow the same worker's disability supplemental benefits credit for companies paying the retaliatory tax as those paying the single business tax. (Tax officials say this credit was repealed by mistake in 1987, and the bill would reinstate it retroactively to August 3, 1987.)
- Prohibit the use of assigned claims facility assessments in calculating the retaliatory tax. When foreign insurers calculate their retaliatory tax liability, they are not permitted to reduce their liability by using in the calculations payments or assessments to certain guaranties and associations, such as placement facilities, guaranty associations, and the catastrophic claims association. The bill would add to the list the assigned claims facility, which is an industry-funded mechanism for paying claims that otherwise would fall outside the no-fault automobile system (such as an uninsured motorist injuring an uninsured pedestrian).
- Continue to permit the retaliatory tax returns of insurance companies to be a public record.

FISCAL IMPLICATIONS:

According to the Department of Treasury, Senate Bill 429 could increase insurance company credits by up to \$3 million or \$4 million. Senate Bill 430 could increase retaliatory tax payments to the state by up to \$7 million per year. (9-24-90)

S.B.s 429 & 430 (9-26-90)

ARGUMENTS:

For:

The bills embody an agreement between insurance companies and the Department of Treasury over how certain tax credits for 1989 and 1990 are to be calculated, settling a dispute over this issue. They also provide for improved administration of insurance tax laws by coordinating the single business tax and retaliatory tax components and bringing them under the unified jurisdiction of the treasury department.

Against:

Representatives of foreign (out-of-state) insurers are opposed to the increase in the retaliatory tax that will result from passage of Senate Bill 430. Prohibiting foreign insurers from using the payments made to the assigned claims facility when calculating their retaliatory tax liability is unfair. The retaliatory tax is supposed to level the playing field between in-state and out-of-state companies (by treating companies from other states as Michigan companies would be treated in those states), yet other states do not have this kind of facility, so Michigan insurers need not contribute to such funds when doing business elsewhere.

Response: The retaliatory tax is determined by making a comparison of tax burdens between foreign insurers doing business in Michigan and Michigan companies doing business in the home states of those insurers. The assigned claims facility should be treated like the other state-mandated, industry-supported mechanisms for the purpose of the retaliatory tax calculation. Michigan insurers often face higher assessments for certain facilities in other states.

POSITIONS:

The Department of Treasury supports the bills. (9-19-90)

The Michigan Insurance Federation supports the bills. (9-19-90)

State Farm Insurance is opposed to the increase in the retaliatory tax liability for foreign insurers under Senate Bill 430. (9-25-90)