

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 365

An Act to amend and reenact § 58.1-2500 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 25 of Title 58.1 a section numbered 58.1-2510, relating to tax credits for retaliatory costs paid by certain insurance companies.

[H 80]

Approved April 11, 1998

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-2500 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 25 of Title 58.1 a section numbered 58.1-2510 as follows:

§ 58.1-2500. Definitions.

As used in this chapter, the term or phrase:

"Commission" means the State Corporation Commission, which is responsible for the administration of this chapter.

"Company" means any association, aggregation of individuals, business, corporation, individual, joint-stock company, Lloyds type of organization, organization, partnership, receiver, reciprocal or inter-insurance exchange, trustee or society.

"Direct gross premium income" means the gross amount of all premiums, assessments, dues and fees collected, received or derived, or obligations taken therefor, from business in this Commonwealth during each year ending December 31, excluding premiums received for reinsurance assumed from licensed insurance companies, without any deduction for dividends paid or deduction on any other account except for premiums returned on cancelled policies, or on account of reduction in rates or reduction in the amount insured, and excluding premiums received or derived to provide insurance of the kinds classified in §§ 38.2-102 and 38.2-109 issued on a group basis by an insurance company insuring its employees, agents and representatives. In computing direct gross premium income on insurance issued by mutual insurance companies other than life insurance companies, refunds or returns made to policyholders otherwise than for losses may be deducted.

"Estimated tax" means the amount which the insurance company estimates as the amount of the tax imposed by this chapter for the license year, measured by direct gross premium income received or derived in the taxable year.

"Insurance company" means any company engaged in the business of making contracts of insurance.

"License year" means the twelve-month period beginning on July 1 next succeeding the taxable year and ending on June 30 of the subsequent year.

"Subscriber fee income" means the gross premium or deposit income collected, received or derived from and credited to the accounts of subscribers from business in the Commonwealth during the preceding year ending December 31, decreased by all returns for cancellation and all amounts returned to subscribers or credited to their accounts as savings.

"Taxable year" means the calendar year preceding the license year upon the basis of which direct gross premium income is computed. The term includes, in the case of direct gross premium income for a fractional part of a calendar year, the period in which such direct gross premium income is received or derived from business in this Commonwealth.

§ 58.1-2510. *Tax credit for retaliatory costs paid to other states.*

A. *For license years beginning on and after July 1, 1998, every qualified company shall be allowed a credit against the tax imposed by § 58.1-2501 in an amount equal to the retaliatory costs incurred during the corresponding taxable year as a result of the difference between other states' lower premium tax rates and other costs and the tax rates and costs imposed by the Commonwealth of Virginia.*

B. *As used in this section:*

"Affiliate" of a specific company or a company "affiliated" with a specific company means a company that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the company specified. A company shall be deemed to control, be controlled by, or be under common control with the company specified if their relationship to each other is such that one company owns at least eighty percent of the voting power of the other company or at least eighty percent of the voting power of all companies is owned by the same interests.

"Affiliated insurance group" means two or more affiliated companies (i) at least one of which is a domestic insurance company and (ii) each of which is in the business of insurance, leasing, financial services, or providing administrative or other support for other members of the group, or is a holding company for the other members of the group.

"Domestic insurance company" means any insurance company incorporated or organized under the

laws of this Commonwealth and headquartered within this Commonwealth.

"Permanent full-time position" means a position of an indefinite duration in this Commonwealth requiring a minimum of thirty-five hours of an employee's time a week for the entire normal year of the company's operations, which "normal year" shall consist of at least forty-eight weeks. Seasonal or temporary positions and positions in building and grounds maintenance, security, and other such positions which are ancillary to the principal business of the employer shall not qualify as new, permanent full-time positions.

"Qualified company" means a domestic insurance company that (i) has made a qualified investment in this Commonwealth and (ii) for license years beginning on or after July 1, 1998, maintained the employment level required for a qualified investment, such level to be measured as of December 31 of the corresponding taxable year. The foregoing requirements may be satisfied by either the domestic insurance company or collectively by all the members of the affiliated insurance group of which the qualified company is a member.

"Qualified full-time employee" means an employee filling a permanent full-time position with a domestic insurance company or member of an affiliated insurance group.

"Qualified investment" means an investment in this Commonwealth by a domestic insurance company or any one or more members of an affiliated insurance group that results in (i) an increase as of December 31, 1997, of at least 325 qualified full-time employees above such company's or group's total combined employment level in this Commonwealth on December 31, 1996, or (ii) during any taxable year beginning on or after January 1, 2001, such company or group having more than 100 qualified full-time employees in this Commonwealth during that entire taxable year.

"Retaliatory cost" means the additional regulatory costs, including any taxes or fees exacted for the privilege of doing business, paid by a Virginia-domiciled insurer to another state pursuant to a law of such state requiring, when an insurer domiciled in such other state is subject to regulatory costs in this Commonwealth that are greater than those imposed by such other state on insurers domiciled in this Commonwealth, the Virginia-domiciled insurer to pay additional regulatory costs to equal the regulatory costs imposed by this Commonwealth on an insurer domiciled in such other state. Such term, however, shall not include penalties or interest for late payment of taxes, fees or other charges, fines or penalties assessed as the result of the violation of laws of such other state, or sums paid in settlement or compromise of alleged violations of such laws.

C. Applications for a credit and for a refund of excess taxes may be submitted by a qualified company individually or on behalf of the members of an affiliated insurance group on or before March 1 next succeeding the end of the taxable year. Any payment of the tax imposed under § 58.1-2501, including any credit claimed under this section, shall be deemed to have been made with the return filed on March 1 reporting such tax and claiming any credits or on the last day prescribed for the timely filing of such return or, if later, the actual date of payment or notice of denial of any credits claimed hereunder. An amended application or return may be filed, and a credit claimed under this section, within one year of the payment of the tax for such year. Applications shall be submitted with a form approved by the Commission and signed by an independent certified public accountant licensed by the Commonwealth who states that the domestic insurance company or affiliated insurance group, as applicable, is eligible for the credit claimed.

D. Any credit provided pursuant to this section shall be taken after all other applicable credits. Any credit not taken by a domestic insurance company may be taken by other members of an affiliated insurance group. Any credit not used to offset tax for the taxable year in which the credit was allowed may be, to the extent not so used, carried forward for the next five succeeding taxable years. Unused credits, including credits carried forward from previous years, in an amount not exceeding \$800,000 annually, exclusive of refunds due to overpayment or other sources, per domestic insurance company or affiliated insurance group, as applicable, shall be refunded to such company, or to the members of such group as they may agree, upon filing a refund application with the Commission. Refunds for unused credits shall first be applied to reduce the oldest unused credits. Refunds, including refunds based on the application of credits and overpayments of estimated taxes, shall be made following the filing of the refund application and paid out of the state treasury on the order of the Commission upon the Comptroller.

E. If two or more domestic insurance companies paying retaliatory costs in any year are members of an affiliated insurance group, the total of the retaliatory costs paid may be combined and apportioned among the members of the affiliated insurance group as the members may agree.

F. The failure of a domestic insurance company or members of an affiliated insurance group to qualify for a new credit under this section in any year shall not affect its ability to use credits carried over from previous years.