

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Maryland Insurance Administration  
(DLS Control No. 16-051)**

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**Overview and Legal and Fiscal Impact**

The regulations amend the enabling authority for and make clarifying changes to several regulations under COMAR 31.06 – Taxes and Fees.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**Maryland Insurance Administration:**

Taxes and Fees: Allocation and Taxation of Premiums: COMAR 31.06.01.00

Retaliatory Tax: COMAR 31.06.02.01 and .02

Premium Tax – Required Filings, Payments, Penalties, and Interest: COMAR 31.06.04.04

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**Legal Analysis**

**Summary of Regulations**

COMAR 31.06 governs premium taxes payable to the Maryland Insurance Administration by insurers and other persons subject to a premium tax, as well as retaliatory taxes imposed under Title 6, Subtitle 3 of the Insurance Article and fees charged by the administration to defray the costs incurred in carrying out the Maryland Risk Retention Act (Title 25, Subtitle 1 of the Insurance Article). Section 6-303 of the Insurance Article provides in part that when another state or country imposes on a Maryland insurer taxes, licenses, or certain other fees which, in the aggregate, are in excess of the taxes, licenses, and other fees, in the aggregate, imposed by Maryland on an insurer organized under the laws of the other state or country, the Maryland Insurance Commissioner must impose on an insurer of the other state or country that is doing business or seeking to do business in Maryland the same taxes, licenses, and other fees that the other state or country imposes on a Maryland insurer doing business in the other state or country (referred to in the regulations as a “retaliatory tax”).

The regulations make several clarifying changes as follows:

- under Chapter .02 – Retaliatory Tax (1) Regulation .01 is revised to clarify that the composite tax form used by a foreign or an alien insurer licensed to do business in

Maryland to report specified information about taxes, licenses, and other fees payable by a Maryland insurer in the foreign or alien insurer's state of domicile, and by the foreign or alien insurer in Maryland, will be "made available" instead of "furnished" to all affected insurers and (2) Regulation .02 is revised to clarify that the administration is required to "perform" instead of "include" an audit of the retaliatory tax with the administration's audit of the annual premium tax report; and

- under Chapter .04 – Premium Tax – Required Filings, Payments, Penalties, and Interest, Regulation .04 is revised to (1) more closely track the language in § 6-108(a) of the Insurance Article by replacing a requirement that the Commissioner "shall assess" a specified penalty with language stating that "[e]ach taxpayer is subject to the assessment of" the penalty and (2) clarify that the penalty may be assessed against a taxpayer that fails to remit or remits less than the amount due with the taxpayer's annual declaration of estimated annual tax or with each quarterly payment report.

In addition to the changes noted above, the enabling authority for COMAR 31.06.01 – Allocation and Taxation of Premiums, is updated to remove a reference to § 6-114 of the Insurance Article which, according to the administration, is unrelated to the subject matter of Chapter .01.

## **Legal Issues**

The regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The administration cites §§ 2-109 and Title 6, Subtitle 3 of the Insurance Article as statutory authority for the changes under Chapter .02, and §§ 2-109, 6-101 through 6-103, and 6-106 through 6-109 of the Insurance Article as statutory authority for the changes under Chapter .04. More specifically, all the regulations are authorized by § 2-109(a)(1) of the Insurance Article and, in addition, the regulations under Chapter .02 are authorized by §§ 6-303 and 6-304 and the regulation under Chapter .04 is authorized by §§ 6-106, 6-108, and 6-109 of the Insurance Article.

Section 2-109(a)(1) establishes the general authority of the Commissioner to adopt regulations to carry out the Insurance Article. Section 6-303 establishes the requirements for imposing a retaliatory tax and § 6-304 establishes the penalty and interest payable when the taxes are not paid when due. Section 6-106 establishes requirements for filing annual and quarterly estimated premium tax reports; § 6-108 establishes the penalty and interest payable when the premium tax is not paid when due; and § 6-109 establishes requirements for auditing premium tax reports filed with the Commissioner.

The regulations comply with the legislative intent of the law.

## **Technical Corrections and Special Notes**

The administration has been notified about, and has agreed to (1) revise the “Statement of Purpose” to clarify and more accurately reflect the changes made to Regulations 31.06.02.01 and 31.04.04.04A and (2) retabulate Regulation 31.06.04.04A(1) to clarify the cross-references to Regulations .02C and .02D under Chapter .02. The administration has indicated that these changes will be reflected when the regulations are published in the *Maryland Register*.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

### **Agency Estimate of Projected Fiscal Impact**

The administration advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs.

### **Impact on Budget**

There is no impact on the State operating or capital budget.

### **Agency Estimate of Projected Small Business Impact**

The administration advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

## **Contact Information**

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