

## **Testimony of a Protected Whistleblower**

### **HB1228 – Premium Receipts Tax Exemption**

I offer this testimony as a whistleblower protected under Maryland’s Whistleblower Rewards Program, [Maryland Tax-General Code §1-401](#), et seq. Maryland adopted this first-of-its-kind state tax whistleblower program effective October 1, 2021. As the first whistleblower under this program, I have provided the State with evidence that sixteen nonprofit hospitals established offshore for-profit subsidiaries selling unlicensed and unlawfully untaxed insurance in the State of Maryland.

HB 1288 would retroactively exempt these hospitals and their Cayman Islands subsidiaries from any obligation to pay the Maryland premium receipts tax at considerable cost to the Maryland taxpayer. HB 1228 should not become law.

#### **The Hospitals Have Been Well Aware of their Tax Obligations for Years**

Of course, the hospitals understood the state and federal tax implications of setting up their for-profit insurance businesses in the Cayman Islands. Indeed, in 2018 the Cayman Islands Captive Forum specifically advised its captive owners that:

- “State premium tax – known as (i) ‘direct placement’ tax or (ii) ‘self-procurement tax’ or (iii) ‘independently procured insurance’ tax would apply (about 30 states impose this type of tax) with a 3% typical rate.” ([page 17](#) and attached as an exhibit).
- “As states look for more revenue, auditors are assessing self-procurement taxes on captive arrangements at an increasing rate.” ([page 49](#) and attached as an exhibit).

A retroactive exemption such as that proposed in HB 1228 would encourage other Maryland businesses to violate the law first and ask for forgiveness from the legislature later. Other states such as [Florida](#) and [Washington](#) aggressively enforce this tax – and [Minnesota](#) has rejected a bill similar to that proposed here.

#### **HB 1228 Undermines the Credibility of the State’s Whistleblower Rewards Program**

The legislature established the Whistleblower Reward Program to encourage citizens to investigate and report unpaid taxes. Based on the promise of a reward for success, I invested thousands of hours into research and tens of thousands of dollars to purchase corporate records from all over the world which I used to track down these and other tax scofflaws. Having done my part under the program, HB 1228’s retroactive exemption threatens to retroactively deny the reward promised to me as a whistleblower. No rational person would participate in Maryland’s whistleblower program again if this legislature permits such a precedent to be set.

## **HB 1228 Directly Benefits Cash-Rich Cayman Islands Insurance Companies**

HB 1228 first and foremost is a tax break directed to for-profit Cayman Islands insurance companies (and one Bermuda insurance company) each of which holds a mountain of cash:

	<b>Off-Shore For-Profit Insurance Company</b>	<b>Domicile</b>	<b>Offshore Assets</b>
1	Bon Secours Mercy Health Insurance Co.	Cayman Islands	\$532 million
2	Cathedral Insurance Company Limited	Cayman Islands	\$163 million
3	Christiana Care Insurance Company Ltd.	Cayman Islands	\$100.8 million
4	Cottage Insurance Company, Ltd.	Cayman Islands	\$66 million
5	Delmarva Peninsula Insurance Company	Cayman Islands	\$32 million
6	Greenleaf Insurance Company, Ltd.	Cayman Islands	\$215.7 million
7	Greenspring Financial Insurance, Ltd.	Cayman Islands	\$299 million
8	Health Enterprises Insurance Company, Ltd.	Cayman Islands	\$200 million
9	Lifefridge Insurance Company, Ltd.	Cayman Islands	\$134 million
10	Meritus Insurance Company, Ltd.	Cayman Islands	\$29 million
11	Monocacy Insurance Ltd.	Cayman Islands	\$28.1 million
12	Ruxton Insurance Company, Ltd.	Bermuda	\$78 million
13	Sheppard Pratt Assurance Company Ltd.	Cayman Islands	\$7.2 million
14	Terrapin Insurance Company	Cayman Islands	\$460 million
15	Trinity Assurance Ltd.	Cayman Islands	\$804.9 million
16	Western Maryland Insurance Company Ltd.	Cayman Islands	\$23.7 million
		<b>TOTAL</b>	<b>\$3,173,000,000</b>

## **Maryland Hospitals Already Protect \$3 Billion from Maryland Tax**

My investigation has revealed that Maryland's non-profit hospitals have transferred more than \$3 billion into their offshore for-profit captive insurance subsidiaries. This is money outside of the reach of Maryland's corporate income tax, already delivering the hospitals a massive tax savings on the profits derived from their for-profit activities in our State. HB 1228 is just an additional tax break on top of the corporate income tax breaks these hospitals already engineered by locating their insurance companies offshore.

## **HB 1228 Damages the Maryland Insurance Market**

HB 1228 would reward hospitals for locating their for-profit insurance subsidiaries (and the money they hold) offshore. If HB 1228 becomes law, these Cayman Islands insurance company subsidiaries would owe a 0% premium tax. In contrast, an insurance company licensed in Maryland that insures a hospital would pay a 2% premium tax. Ins. Code § 6-102.

## **Maryland Faces Substantial Lost Revenue if HB 1228 becomes Law**

My research indicates that the hospitals collectively owe the State between \$10 million and \$20 million in back taxes – and some \$2 million per year going forward. Maryland does not have the extra revenue available to favor offshore for-profit enterprises that have operated in the state without a license and without paying the taxes they owe.

# TAX CONSIDERATIONS- OFFSHORE CAPTIVES

- **Premiums paid generally not subject to a federal excise tax (4% of the premium for direct insurance and 1% for reinsurance or life insurance)**
  - Except for premiums from unrelated voluntary physicians or entities
- **Can avoid attribution of any “unrelated business taxable income” to captive’s tax-exempt parent**
  - Except for insurance income from unrelated voluntary physicians or entities
- **State premium tax - known as (i) “direct placement” tax or (ii) “self-procurement” tax or (iii) “independently procured insurance” tax would apply (about 30 states impose this type of tax) with 3% rate typical**



# STATE TAX CONSIDERATIONS

- U.S. domiciled captives are typically subject to state tax on their gross receipts / premiums received that are sourced to that state
- Foreign domiciled captives are not subject to U.S. state premium tax
- However, many states impose a direct procurement / self-procurement tax or tax on unauthorized insurers (there have been constitutional law challenges to such taxes)
- These taxes are often applied at the insured level (similar to a sales tax) in lieu of taxing the captive's income at the captive level
- As states look for more revenue, auditors are assessing self-procurement taxes on captive arrangements at an increasing rate
- Self-procurement tax is generally levied based upon where the contract of insurance is entered into, as opposed to where the risk is based (e.g., Todd Shipyards)
- Careful planning and execution of the insurance procurement process can bolster filing positions followed in connection with self-procurement taxes
- Even states without a self-procurement tax should be monitored in light of the recent *Microsoft* matter in which the taxpayer agreed to pay premium taxes to the state of Washington for transactions involving a non-resident captive