

IRS Wants Tax Fix for Hedge Fund Reinsurers

The proposed regulation would “clarify the circumstances under which investment income earned by a foreign insurance company is derived in the active conduct of an insurance business for purposes of determining whether the income is passive income,” according to an IRS request for comment on the proposed rule change. The regulation would affect U.S. shareholders of foreign companies, including investors in hedge funds that participate in insuring or reinsuring. The IRS seeks comments specifically “with regard to how to determine the portion of a foreign insurance company’s assets that are held to meet obligations under insurance contracts issued or reinsured by the company.”

ANTI-REBATING > SCOTT SINDER

Zenefits: Disrupting. So What’s New?

It’s one in a long line of firms commoditizing products. Your expertise is not a commodity.

There are some who believe a specter is haunting our marketplace and its name is Zenefits. Zenefits purports to offer a free Web-based human resources management platform to any company that wants it. It then attempts to use that platform to sell various HR-related products, primary among them group health benefits products. Zenefits’ CEO argues the employer-provided healthcare market is ripe for a revolution, and he intends to lead it.

The most recent development occurred April 13 when Utah Gov.

Gary Herbert signed a law now being touted as a special Zenefits exception to the state’s anti-rebating regime. Specifically, the bill (Utah H.B. 141) amends Utah’s rules to allow an insurance agent, broker or consultant to provide goods or services free of charge (or for less than fair market value) provided four things are true:

- ▶ The goods or services are available on the same terms to anyone.
- ▶ Receipt is not contingent on the sale, renewal, termination or price quote of or for an insurance contract.

- ▶ There is no subsequent retroactive charge based on the occurrence or non-occurrence of an event subsequent to receipt of the goods or services.
- ▶ The recipient of the goods and services receives an oral or written disclosure before an insurance solicitation indicating their receipt is not contingent on any purchase, continuation or termination of an insurance product or on receiving a quote for an insurance product.

This expands the statutory list of insurance-related services that may be provided without running afoul of Utah’s anti-rebating rules. Any agent or broker doing business in Utah can take advantage of this.

But what is the broader impact? I can think of at least two. There is an impact on other states now grappling with how the Zenefits model comports with their anti-rebating regime. And there’s a broader long-term impact on how business is done in our sector.

REGULATORY NEWS TICKER

and EEOC costs of bringing complaint covered. www.mdinsurance.state.md.us/

MASSACHUSETTS Daniel Judson appointed insurance commissioner, succeeding Joseph Murphy, who left in December to join Coverys as COO. Judson was most recently president of Commonwealth Automobile Reinsurers, the high-risk pool for auto insurance in the state. He previously was compliance manager at Coverys and partner in Morrison Mahoney law firm. He has also served in various positions at the Division

of Insurance, including general counsel and deputy commissioner. www.mass.gov

MISSOURI State legislature again sends bill to governor capping non-economic damage in medical malpractice cases. Similar law overturned in state Supreme Court in 2012. New caps set at \$400,000 except in catastrophic cases of paralysis, vision loss or brain injury, which would allow up to \$700,000 in non-economic damages. Wrongful death non-economic damage cap also raised to \$700,000 from existing \$350,000. Caps under S.B. 239 would

rise 1.7% each year. On governor’s desk at press time. » Circuit Court rules state can’t restrict healthcare exchange navigators from helping people enroll in insurance plan or from giving advice or discussing health plans not listed on healthcare.gov. The law required them to refer consumers who have had insurance through an agent or broker to an insurance provider. The state may institute licensure requirements for navigators and counselors. www.insurance.mo.gov

NEBRASKA Gov. Pete Ricketts signed employment law, L.B. 627, granting

pregnant workers accommodations in workloads and schedules. Also prohibits discrimination in hiring and firing. www.doi.ne.gov/

NEW YORK Department of Financial Services finds cyber-security weaknesses in banks’ third-party vendors, including law firms and HVAC companies. Could provide primary point of entry for hackers. One third of banks don’t require vendors to notify them of breaches, and 20% don’t require third-party vendors to represent having minimum security requirements.



IMPACT ON THE STATES

You can read this Utah development through two lenses. It can be a march toward the inevitable liberalizing of anti-rebating regimes in the commercial insurance sector. We champion innovation and encourage the market to develop multiple models and solutions, which are good for the consumer and should be welcomed.

Or you can read Utah's decision as a concession, realizing current anti-rebating regimes do not allow insurance brokers to offer free and discounted goods and services, even if they make the no-strings-attached offer to the general public. The only way to authorize those activities is to change anti-rebating statutes to specifically allow them.

Regulators in most states where Zenefits operates have so far taken a hands-off approach. This is consistent

with a long history of non-enforcement of the anti-rebating rules in many jurisdictions. California, the biggest market in which Zenefits has been building its customer base, repealed its anti-rebating rules years ago. Unfortunately, as we have seen over time, a practice of regulatory non-enforcement can change abruptly and without warning.

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BUSINESS IMPACT

My inbox has begun to fill up with guidance for dealing with the evolving marketplace. I would argue the Zenefits model is not revolutionary but is another in a series of efforts, going back more

than two decades, that attempt to commoditize segments of our markets. There are plenty of non-producer assisted options in the marketplace

for those who feel they don't need advice. Zenefits is just the latest.

The cornerstone of the value proposition our Council members offer, however, is advice and guidance. You want and need to supplement this with products and services that make your firms financially robust. But for us the advice and guidance has become the lead draw. Many member firms distinguish themselves based on your expertise or the advisory model you offer. And you compete on that.

I do not view Zenefits as disrupting that evolution. Instead, it's enhancing it for us, forcing us to identify our competitive advantages and to use them on behalf of our clients, who want and need the expertise and wisdom we offer. And that's something that can't be displaced with an algorithm.

Sinder, CIAB general counsel, is a partner at Steptoe & Johnson. ssinder@steptoe.com

East Coast Storm Surge Warnings Coming

Starting June 1, the National Hurricane Center in Miami will add storm-surge alerts to its tropical storm and hurricane warnings and watches when water might rise by three feet or more above normal. Watches will be issued 48 hours in advance, and warnings will come 36 hours before storms make landfall. Warnings and watches will appear on surge maps as purple areas—darker for warnings, lighter for watches.

DFS plans new standards for banks' third-party vendors, including representations and warranties to be provided by vendors on cyber protections they have. Same probe for insurers' third-party vendors was under way at press time. » Former superintendent James Wrynn signs on at Guy Carpenter as managing director and vice chairman of strategic advisory. Moves from law firm Goldberg Segalla, where he was partner in global insurance services practice group working with Guy Carpenter on strategic initiatives. www.dfs.ny.gov

NORTH CAROLINA Changes way state counts work-related fatalities. Now, state labor agency counts only deaths it investigates and for which it can levy fines. Excluded are victims of workplace violence, workers on farms with fewer than 10 employees and self-employed people with unincorporated companies. The change in accounting altered death count for 2013 to 23, ignoring more than 80 others who died from work-related injuries. www.ncdoi.com

OKLAHOMA H.B. 809, which would restrict local ordinances on oil and gas drilling,

passed the House and was in the state Senate at press time. It's designed to prevent differing rules across the state for the industry, which is regulated by the Oklahoma Corporation Commission. The bill gives local communities other authority over rules related to drilling industry, such as road use, traffic, noise and odor from oil and gas operations, for example. » Gordon Amini named general counsel of Insurance Department. He served in that role in 1981. Most recently retired from Physician Liability Insurance Co., where he was SVP and general counsel.

Succeeds Susan Dobbins, who retired in March. » New law requires doctors to check prescription drug database before prescribing or refilling specified addictive drugs, effective Nov. 1. The database will reveal if patients have been prescribed same drug by other doctor. www.oid.ok.gov

OREGON Names Kerry Barnett as president and CEO of SAIF, the state-chartered nonprofit workers comp insurer. He succeeds John Gilkey, who is retiring. Barnett joins from Cambia Health Solutions,