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Tex. Admin. Code 3.355 Insurance services.

State & Local Regulations

3. 355 . Insurance services.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affiliated group- A group of one or more entities in which a controlling interest is owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member entities.

(2) Certified public accountancy firm- A person who holds a firm license issued under Occupations Code, Chapter 901, Subchapter H (Firm License Requirements), or a firm that practices public accountancy in this state under Occupations Code, §901.461 (Practice by Certain Out-of-State Firms).

(3) Controlling interest-

(A) for a corporation, either more than 50%, owned directly or indirectly, of the total combined voting power of all classes of stock of the corporation, or more than 50%, owned directly or indirectly, of the beneficial ownership interest in the voting stock of the corporation;

(B) for a partnership, association, trust, or other entity other than a limited liability company, more than 50%, owned directly or indirectly, of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity; and

(C) for a limited liability company, either more than 50%, owned directly or indirectly, of the total

membership interest of the limited liability company or more than 50%, owned directly or indirectly, of the beneficial ownership interest in the membership interest of the limited liability company.

(4) Insurance loss or damage appraisal- Any activity performed for purposes of valuing damages, or estimating the quantity, value, or extent of loss of property. Appraisal activities performed prior to damage or loss, such as the appraisal of jewelry for scheduling on a homeowners insurance policy, are not considered loss or damage appraisal.

(5) Insurance inspection- Any activity performed to evaluate risks to property, to survey or value property in connection with the furnishing of insurance coverage, or any other similar activity.

(6) Insurance investigation- Any activity performed to evaluate an individual's eligibility or qualifications for insurance coverage, or for the payment of benefits, or any other similar activity. For example, the assembly or evaluation of information for the purpose of determining whether to issue a life insurance policy to a specific individual would be considered an insurance investigation.

(7) Insurance or annuity actuarial analysis or research- Any activity performed in connection with the calculation of rates for a policy of insurance or annuity rates, reserves, refunds, dividends, insurance benefits, or other similar activities.

(8) Insurance claims adjustment or claims processing- Any activities to supervise, handle, investigate, pay, settle, or adjust claims or losses.

(9) Insurance loss prevention service- Any activities performed in an effort to identify, analyze, evaluate, control, anticipate and/or eliminate the occurrence of accidents, losses, or damage. Examples include: survey recommendations, training programs, consultations, analysis of accident causes, and industrial hygiene and health services.

(10) Insurance carrier- Every type of insurer engaged in the business of insurance that is licensed or operates under or is required to be licensed or to operate under the provisions of the Insurance Code.

(11) Public insurance adjuster- A person, as set out in Insurance Code, §4102.001(3), who:

(A) for direct, indirect, or any other compensation:

(i) acts on behalf of an insured in negotiating for or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or personal property; or

(ii) on behalf of any other public insurance adjuster, investigates, settles, or adjusts or advises or assists an insured with a claim or claims for loss of damage under any policy of insurance covering real or personal property; or

(B) advertises, solicits business, or holds himself or herself out to the public as an adjuster of claims for loss or damage under any policy of insurance covering real or personal property.

(12) Self-insured plan- A plan whereby an employer maintains funds for providing employee benefits rather than transferring risk by purchasing insurance from an insurance carrier. This plan is not considered a policy of insurance for sales tax purposes.

(13) Third-party administrator- A person hired by an employer to administer the provisions of the employer's self-insured plan.

(b) Taxable services. Insurance services defined in subsection (a) of this section performed on behalf of an insurance carrier, its insured, its policyholders, or others pertaining to a policy or policies of insurance for monetary fees, dues, or other consideration are taxable. These services performed pursuant to a self-insured plan or for a third-party administrator handling distribution of funds under a self-insured plan are not taxable.

(c) Nontaxable services. The following services are not taxable as insurance services:

(1) insurance coverage for which a premium is paid or sales commissions are paid to insurance agents. Insurance services provided by an insurance agent without charge to the customer are not taxable. If a customer pays a separate amount for these services over and above the amount paid as a commission for a policy, this separate charge is taxable;

(2) medical services provided by any medical provider, including physicians, medical staff at the physician's direction, hospitals, clinics, chiropractors, and other practitioners of the healing arts;

(3) services related to automobile warranties or service contracts for which the State Board of Insurance allows an exclusion to third-party administrators;

(4) services performed on behalf of an insured by a public insurance adjuster on or after October 1, 2015. Insurance services performed by a public insurance adjuster before October 1, 2015, are subject to tax regardless of the date billed, invoiced, or paid;

(5) effective January 1, 2018, services performed by a certified public accountancy firm, if less than one percent of the firm's total revenue in the prior calendar year is from services in this state that would otherwise constitute taxable insurance services, as described in subsection (b) of this section; and

(6) effective January 1, 2018, services performed on behalf of a certified public accountancy firm by an owner of the firm or a member of the firm's affiliated group, if less than one percent of the owner's or member's total revenue in the prior calendar year is from services in this state that would otherwise constitute taxable insurance services, as described in subsection (b) of this section.

(d) Doing business. Insurance services will be subject to taxation in Texas if the individual, entity, or property which is the object of the service is in Texas and the company for which the services are performed is either an insurance carrier as that term is defined in subsection (a)(10) of this section, or if not an insurance carrier, is doing business in Texas.

(e) Fees and premiums. Insurance premiums and any other form of compensation subject to gross administrative or service fees taxes under the Insurance Code are subject to tax hereunder if paid in connection with the performance of an insurance service. Insurance premiums subject to gross premiums taxes under the Insurance Code are not subject to sales tax.

(f) Not insurance related. Where an insurance service is performed as a part of a nontaxable service and the primary purpose for purchasing the nontaxable service is not insurance related, no part of the fee or charge is taxable. For example, the charge for an appraisal required by a lender as a condition of extending credit is not taxable as an insurance service because the primary purpose in obtaining the service is financing the loan. The fact that the appraisal may also be used as the basis for establishing minimum property insurance required by the lender as a condition of financing does not render the service taxable as an insurance service.

(g) Responsibilities of persons providing insurance services. Persons providing insurance services must obtain a tax permit and collect tax on the entire sales price of their services. The presumption is that all services are taxable unless the service provider obtains an exemption certificate from a customer claiming an exemption. For example, a third-party administrator may issue an exemption certificate for charges for claim adjustment activities done pursuant to a self-insured plan.

(h) Resale certificates.

(1) Providers of insurance service may issue a resale certificate in lieu of tax to suppliers of tangible personal property only if care, custody, and control of the property will be transferred to the service

provider's client. For example, an insurance service provider purchases magnetic tape to transfer the results of actuarial research to service provider's client. The tape is transferred to the client and the client owns and uses the tape to review the results of the actuarial research. The insurance service provider may purchase the tape tax free by issuing a resale certificate. Tax is due on the total amount charged the customer, including amounts for the tape and for the services.

(2) A resale certificate may be issued for a service if the buyer intends to transfer the service as an integral part of taxable services. A service will be considered an integral part of a taxable service if the service purchased is essential to the performance of the taxable service and without which the taxable service could not be rendered.

(3) A resale certificate may be issued for a taxable service if the buyer intends to incorporate the service into tangible personal property which will be resold. If the entire service is not incorporated into the tangible personal property, it will be presumed the service is subject to tax and the service will only be exempt to the extent the buyer can establish the portion of the service actually incorporated into the tangible personal property. If the buyer does not intend to incorporate the entire service into the tangible personal property, no resale certificate may be issued, but credit may be claimed at the time of sale of the tangible personal property to the extent the service was actually incorporated into the tangible personal property.

(i) Unrelated services.

(1) A service will be considered as unrelated if:

(A) it is not an insurance service, nor a service taxed under other provisions of Tax Code, Chapter 151;

(B) it is of a type which is commonly provided on a stand-alone basis; and

(C) the performance of the unrelated service is distinct and identifiable. Examples of an unrelated service which may be excluded from the tax base include activities as third-party administrators, appraisals for reasons other than loss or damage, or doctor's fees.

(2) Where nontaxable unrelated services and taxable services are sold or purchased for a single charge and the portion relating to taxable services represents more than 5.0% of the total charge, the total charge is presumed to be taxable. The presumption may be overcome by the insurance service provider at the time the transaction occurs by separately stating to the customer a reasonable charge for the taxable services. However, if the charge for the taxable portion of the services is not separately

stated at the time of the transaction, the service provider or the purchaser may later establish for the comptroller, through documentary evidence, the percentage of the total charge that relates to nontaxable unrelated services. The insurance service provider's books must support the apportionment between exempt and nonexempt activities based on the cost of providing the service or on a comparison to the normal charge for each service if provided alone. If the charge for exempt services is unreasonable when the overall transaction is reviewed considering the cost of providing the service or a comparable charge made in the industry for each service, the Comptroller will adjust the charges and assess additional tax, penalty, and interest on the taxable services.

(3) Charges for services or expenses directly related to and incurred while providing the taxable service are taxable and may not be separated for the purpose of excluding these charges from the tax base. Examples would be charges for meals, telephone calls, hotel rooms, or airplane tickets.

(j) Service benefit location-multistate customer.

(1) To the extent an insurance service is used to support a separate, identifiable segment of a customer's business (other than general administration or operation of the business) the service is presumed to be used at the location where that part of the business is conducted.

(2) If that part of the business is conducted at locations both within and outside the state, the service is not taxable to the extent it is used outside Texas. A multi-state customer may use any reasonable method for allocation which is supported by business records.

(3) A multi-state customer purchasing insurance services, such as actuarial services, for the benefit of both in-state and out-of-state locations is responsible for issuing to the insurance services provider an exemption certificate asserting a multi-state benefit, and for reporting and paying the tax on that portion of the insurance services charge which will benefit the Texas location. A provider of insurance services that accepts such a certificate in good faith is relieved of responsibility for collecting and remitting tax on transactions to which the certificate relates.

(4) The customer's books must support the assignment of the service to an identifiable segment of the business, the determination of the location or locations of the use of the service, and the allocation of the taxable charge to Texas.

(5) To the extent the use of the service cannot be assigned to an identifiable segment of a customer's business, the service is presumed to be used to support the administration or operation of the customer's business generally. The service is presumed to be used at the customer's principal place of business. The principal place of business means the place from which the trade or business is directed or managed.

(k) Local tax. For information on the collection and reporting responsibilities of providers and purchasers of taxable services, see §3.334 of this title (relating to Local Sales and Use Taxes).

(l) Use tax. If a provider of an insurance service is not doing business in Texas or in a specific local taxing jurisdiction and is not required to collect Texas state or local tax, it is the Texas customer's responsibility to report and pay the use tax directly to this office.

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