

Rules of

Department of Insurance

Division 200—Financial Examination

Chapter 3—Insurance Taxes Other Than Surplus

Lines

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**Title 20—DEPARTMENT OF
INSURANCE**
Division 200—Financial Examination
**Chapter 3—Insurance Taxes Other
Than Surplus Lines**

**20 CSR 200-3.010 Reporting of Flexible
Payment Deferred Annuity Contract Pre-
miums**

PURPOSE: This rule recognizes that flexible payment deferred annuities differ from traditional fully guaranteed fixed-premium, fixed-benefit annuity contracts in that—the full risk on the contract may not be determinable and may not attach to the insurer; and the total premium is not paid until it is applied to provide annuity payment. This rule was adopted pursuant to the provisions of section 374.045, RSMo and to implement sections 148.310, 148.320, 148.330, 148.340, 148.350, 148.360, 148.370, 148.380, 148.390, 148.400, 148.410, 148.420, 148.430 and 376.350, RSMo.

(1) Definition. A flexible payment deferred annuity is defined as a contract which provides for the payment of a guaranteed or variable annuity or both with the amount of the annuity determined, not at date of issue, but at the annuity commencement date by the value at that time of the total payments made. The number of these payments are not specified in the contract, but are determined by the contract holder within a range acceptable to the insurance company. These contracts may also specify guaranteed minimum nonforfeiture values and annuity rate guarantees either for the life of the contract or guaranteed lesser period. All these contracts must be approved by the Missouri Department of Insurance.

(2) Reporting Premiums for Premium Tax Purposes. Insurers writing flexible payment deferred annuities as defined may consider as premiums received for those contracts, within the meaning of sections 148.310–148.430, RSMo, the amount actually applied at the annuity commencement date to provide the annuity. The premiums received shall be equal to the value of the contract on the annuity commencement date applied to provide a guaranteed or variable annuity.

(3) Insurers Previously Reporting Under Paid-In Approach.

(A) Any insurer previously reporting premiums on the paid-in approach (that is, reported the premium upon receipt), in the event of withdrawal of funds before their application to an annuity, may deduct the

amount withdrawn as return of premiums with the meaning of sections 148.310–148.430, RSMo. Any insurer so reporting shall make a separate return showing the amounts of funds withdrawn, the tax year for which premium tax was paid on those funds and the date reported for taxation purposes.

(B) Each insurer shall signify on its premium tax return covering premiums for the calendar year 1975 the method it is currently using to report premiums received under flexible payment deferred annuities. If an insurer using the paid-in approach subsequently adopts the pay-out approach or vice versa, it shall so signify on the premium tax return covering premiums for that calendar year.

AUTHORITY: sections 148.310, 148.320, 148.330, 148.340, 148.350, 148.360, 148.370, 148.380, 148.390, 148.400, 148.410, 148.420, 148.430, 374.045 and 376.350, RSMo 1986 and 148.360, RSMo Supp. 1990. This rule was previously filed as 4 CSR 190-II.130. Original rule filed Dec. 23, 1975, effective Jan. 2, 1976.*

**Original authority: 148.310 and 148.430, RSMo 1939, amended 1945; 148.320, RSMo 1939, amended 1947, 1971, 1982; 148.330, RSMo 1939, amended 1941, 1945, 1982; 148.340, RSMo 1939, amended 1982, 1983; 148.350, RSMo 1939, amended, 1945, 1982; 148.360, RSMo 1939, amended 1945, 1947, 1965, 1977, 1982, 1990; 148.370, RSMo 1945, amended 1969, 1982; 148.380, RSMo 1945, amended 1945, 1949, 1982; 148.390, RSMo 1945, amended 1951, amended 1963, 1969, 1971, 1976, 1986; 148.400, RSMo 1945, amended 1969; 148.410, RSMo 1939, amended 1982; 148.420, RSMo 1939, amended 1945, 1983; 374.045, RSMo 1967; and 376.350, RSMo 1939.*

General Am. Life Ins. Co. v. Bates, 363 Mo. 143, 249 SW2d 458 (Mo banc 1952). Tax on premiums received is not a property tax, but an excise or occupation tax imposed upon the privilege of conducting business in this state.

Op. Atty. Gen. No. 62, Miller (1-17-50). Title insurance companies organized under the provisions of art. 17, Chapter 37, RSMo (1939), are exempted from payment of franchise tax to the extent assets of the corporation are reasonably allocated to such insurance business.

**20 CSR 200-3.200 New Business Facility
Tax Credit**

PURPOSE: This rule implements and effectuates the legislative intent of the amendments to sections 135.100–135.150.1., RSMo in House Bill No. 566 (Laws 1993), allowing insurance companies to receive the new busi-

ness facility tax credit when eligibility for this credit is certified by the Department of Economic Development. This rule is necessary to process credits following certification by the director of economic development.

(1) An insurance company which wants to receive credit for a new business facility shall include the amount of the credit in the designated place in the company's premium tax return. The credit and the amount of it shall be supported by including a copy of the certification by the director of economic development with the premium tax return filed with the Department of Insurance. The new business facility tax credit shall be taken first against the direct premium tax, but only after all credits and deductions are made from the premium taxes otherwise due.

(2) The new business facility tax credit shall not be subject to subsection 375.916.1., RSMo, that is this credit shall not be subject to the retaliatory tax.

(3) To the extent the amount of the new business facility tax credit exceeds the amount necessary to reduce the net Missouri premium tax due to zero (0), this excess may be applied as a credit against any retaliatory tax amount otherwise due.

(4) If an insurance company, which is also a taxpayer, has income derived from the operation of a new business facility as well as from other activities conducted with this state, the direct premiums derived by the insurance company from the operation of the new business facility shall be determined by multiplying the insurance company's direct premiums, computed in accordance with Chapter 148, RSMo, by a fraction, the numerator of which is the property factor, as defined in subsection (4)(A) of this rule plus the payroll factor, as defined in subsection (4)(B) of this section, and the denominator which is two (2)—

(A) The property factor is a fraction, the numerator of which is the new business facility investment certified for the tax period, and the denominator of which is the average value of all the taxpayer's real and depreciable tangible personal property owned or rented and used in this state during the tax period. The average value of all this property shall be determined as provided in Chapter 32, RSMo; and

(B) The payroll factor is a fraction, the numerator of which is the total amount paid during the tax period by the taxpayer for compensation to persons qualifying as new business facility employees, as determined by



section 135.110.4., RSMo at the new business facility, and the demoninator of which is the total amount paid in this state during the tax period by the taxpayer for compensation. The compensation paid in this state shall be determined as provided in Chapter 32, RSMo. For the purpose of this section, other activities conducted within this state shall include activities previously conducted at any time during the tax period immediately prior to the tax period in which commencement of commercial operations occurred.

**Original authority: 374.045, RSMo 1967, amended 1993, 1995.*

AUTHORITY: sections 135.150, RSMo Supp. 1991 and 374.045, RSMo 1986. Original rule filed June 18, 1993, effective Jan. 1, 1994.*

**Original authority: 135.150, RSMo 1980, amended 1986, 1991 and 374.045, RSMo 1967.*

20 CSR 200-3.300 Retaliatory Tax Supplement Filing

PURPOSE: The purpose of this rule is to effectuate or aid in the interpretation of section 375.916, RSMo, as that section relates to fees charged for the appointment and termination of appointment of insurance producers.

(1) On or before February 10 of each year, each foreign insurer authorized to transact the business of insurance in this state shall file a statement with the director that contains the following information with respect to the year ended December 31 immediately preceding:

(A) The total number of insurance producers appointed by the insurer who are authorized to sell, solicit or negotiate contracts of insurance in this state on behalf of the insurer as of January 1 of such year; and

(B) The number of insurance producers added during such year to the register required by section 375.022, RSMo; and

(C) The number of insurance producers terminated during such year from such register; and

(D) The total number of insurance producers appointed by the insurer as of December 31 of such year (such number shall equal the sum of subsections (A) and (B) less subsection (C) of this section); and

(E) A schedule of fees charged by the insurer's state or country of domicile for the appointment, termination, or renewal of appointment of insurance producers.

AUTHORITY: section 374.045, RSMo 2000. Original rule filed July 12, 2002, effective Jan. 30, 2003.*