CHAPTER 7

Fees and Taxes

**SECTION 38‑7‑10.** License fees for insurers.

 (A) Every insurer, except mutual benevolent aid associations and fraternal benefit associations, before transacting business in this State shall pay a license fee of eight hundred dollars to the department and after that initial payment pay to the department a biennial license fee of eight hundred dollars by March first every other year.

 (B) In addition to the license fees required in subsection (A), the director or his designee shall collect from each insurer licensed by him to do business in this State a license fee of four hundred dollars for each kind of insurance for which the insurer is licensed as listed in Section 38‑5‑30(a) through (g). Each mutual insurer doing a property business only in no more than three counties shall pay a biennial fixed license fee of one hundred dollars and each mutual insurer doing a property business only in a single county shall pay a biennial fixed license fee of forty dollars. The license fees required in this subsection must be paid to the director or his designee before the insurer transacts business in this State and after that initial payment must be paid biennially to the director or his designee by March first every two years.

HISTORY: Former 1976 Code Section 38‑7‑10 [1960 (51) 1554; 1962 Code Section 37‑171; 1982 Act No. 403, Section 1] recodified as Section 38‑63‑510 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑5‑510 [1986 Act No. 540, Part II, Section 31A] recodified as Section 38‑7‑10 by 1987 Act No. 155, Section 1; 1992 Act No. 501, Part II Section 11B; 1993 Act No. 181, Section 534.

Library References

Insurance 1127.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71.

LAW REVIEW AND JOURNAL COMMENTARIES

License Fees and Taxes. 24 S.C. L. Rev. 577.

State Corporation Tax—Reinsurance Premiums. 24 S.C. L. Rev. 658.

NOTES OF DECISIONS

In general 1

1. In general

Where a foreign insurance company was unlicensed in the State and had appointed an organizer in the State who solicited and secured applications on the company’s forms for benefit certificates in the defendant company, charging membership and enrollment fees with each application, forwarding the applications and the enrollment fees to the insurance company at its home office, such insurance company was transacting business within the State (decided under former law). McNeely v. Fidelity Mut. Ben. Ass’n (S.C. 1935) 178 S.C. 247, 182 S.E. 425. Insurance 1164

**SECTION 38‑7‑20.** Insurance premium taxes; allocation.

 (A) In addition to all license fees and taxes otherwise provided by law, there is levied upon each insurance company licensed by the director or his designee an insurance premium tax based upon total premiums, other than workers’ compensation insurance premiums, and annuity considerations, written by the company in the State during each calendar year ending on the thirty‑first day of December. For life insurance, the insurance premium tax levied herein is equal to three‑fourths of one percent of the total premiums written. For all other types of insurance, the insurance premium tax levied in this section is equal to one and one‑fourth percent of the total premiums written. In computing total premiums, return premiums on risks and dividends paid or credited to policyholders are excluded.

 (B) Effective July 1, 2013, through June 30, 2030, of the revenue of the premium taxes collected pursuant to this section:

 (1) one percent must be transferred to the South Carolina Forestry Commission and used by that agency for firefighting and firefighting equipment replacement;

 (2) one percent must be transferred to the aid to fire districts account within the State Treasury and distributed for firefighting equipment. One‑half of the annual allocated funds must be distributed equally to each fire department in the State, and the remaining balance must be used to fund the V‑SAFE program pursuant to Section 23‑9‑25;

 (3) one quarter of one percent must be transferred to the aid to emergency medical services regional councils within the Department of Health and Environmental Control and used for grants to fund emergency medical technician and paramedic training; and

 (4) the remaining insurance premium taxes collected pursuant to this section must be deposited to the credit of the general fund of the State.

HISTORY: Former 1976 Code Section 38‑7‑20 [1960 (51) 1554; 1962 Code Section 37‑172; 1964 (53) 2139; 1982 Act No. 403, Section 2] recodified as Section 38‑63‑520 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑5‑520 [1986 Act No. 540, Part II, Section 31 B] recodified as Section 38‑7‑20 by 1987 Act No. 155, Section 1; 1987 Act No. 170, Part II, Section 40 B (amendment to former 1976 Code Section 38‑5‑520 transferred to Section 38‑7‑20 by 1987 Act No. 155, Section 24]; 1993 Act No. 181, Section 534; 2003 Act No. 73, Section 2, eff June 25, 2003; 2012 Act No. 271, Section 1, eff July 1, 2013; 2016 Act No. 273 (S.973), Section 1, eff July 1, 2017.

Editor’s Note

2016 Act No. 273, Section 2, provides as follows:

“SECTION 2. This act takes effect on July 1, 2017, and first applies to Fiscal Year 2017‑2018.”

Effect of Amendment

2016 Act No. 273, Section 1, rewrote (B), adding (1) through (4).

CROSS REFERENCES

Insurance companies exempt from taxes, see Section 38‑7‑180.

Venture Capital Investment Act, definitions, see Section 11‑45‑30.

Library References

Insurance 1127, 1165.

Taxation 2243.

Westlaw Topic Nos. 217, 371.

C.J.S. Insurance Sections 67 to 69, 71, 127 to 131.

C.J.S. Taxation Sections 206 to 212.

RESEARCH REFERENCES

Treatises and Practice Aids

Couch on Insurance Section 9:6, Other Regulatory Statutes Governing Reinsurance.

Attorney General’s Opinions

A domestic insurance company which computes its license fee under the maximum limitation of five percent of net income is subject to the allocation and apportionment statutes in Chapter 7 of Title 12, known as the Income Tax Act of 1926; tabular interest is a related expense deductible against investment income. 1980 Op.Atty.Gen, No 80‑81, p 129. [Under former Section 38‑5‑410.], 1980 WL 81963.

Former Code 1962 Section 37‑132 should not be construed or applied so as to disallow credit for local investments made by foreign insurance companies from Georgia in retaliation against that state, which requires South Carolina companies to pay fees equal to the basic rate charged Georgia insurers in this State and which disallowed credit for investments made by South Carolina insurers in Georgia, as the effective tax rate is substantially the same in both states. 1965‑66 Op.Atty.Gen, No 2040, p 115. [Under former Section 38‑5‑330.], 1966 WL 8509.

NOTES OF DECISIONS

In general 2

Foreign insurers 3

Reinsurance fees 4

Validity of prior law 1

1. Validity of prior law

Under the McCarran Act continuing state regulation and taxation of the insurance business, South Carolina license tax imposed on premiums collected by foreign insurance companies in South Carolina as a condition of receiving certificate of authority to do business in South Carolina was not invalid as a burden on interstate commerce. Prudential Ins. Co. v. Benjamin (U.S.S.C. 1946) 66 S.Ct. 1142, 328 U.S. 408, 90 L.Ed. 1342, 164 A.L.R. 476.

The McCarran Act continuing state regulation and taxation of the insurance business, when construed as permitting South Carolina to continue to levy a license tax on premiums collected by foreign insurance companies in South Carolina as a condition of receiving certificate of authority to do business in South Carolina, is not invalid as denying due process of law. Prudential Ins. Co. v. Benjamin (U.S.S.C. 1946) 66 S.Ct. 1142, 328 U.S. 408, 90 L.Ed. 1342, 164 A.L.R. 476.

The McCarran Act continuing state regulation and taxation of the insurance business, when construed as permitting South Carolina to continue to levy a license tax on premiums collected by foreign insurance companies in South Carolina as a condition of receiving certificate of authority to do business in South Carolina, is not violative of constitutional requirement vesting all legislative power in Congress. Prudential Ins. Co. v. Benjamin (U.S.S.C. 1946) 66 S.Ct. 1142, 328 U.S. 408, 90 L.Ed. 1342, 164 A.L.R. 476.

The McCarran Act continuing state regulation and taxation of insurance business, when construed as permitting South Carolina to continue to levy a license tax on premiums collected by foreign insurance companies in South Carolina as a condition of receiving certificate of authority to do business in South Carolina, is not invalid as an invasion of the state’s own power of taxation. Prudential Ins. Co. v. Benjamin (U.S.S.C. 1946) 66 S.Ct. 1142, 328 U.S. 408, 90 L.Ed. 1342, 164 A.L.R. 476.

The McCarran Act continuing state regulation and taxation of the insurance business, when construed as permitting South Carolina to continue to levy a license tax on premiums collected by foreign insurance companies in South Carolina as a condition of receiving certificate of authority to do business in South Carolina, is not violative of constitutional requirement that excises shall be uniform throughout the United States. Prudential Ins. Co. v. Benjamin (U.S.S.C. 1946) 66 S.Ct. 1142, 328 U.S. 408, 90 L.Ed. 1342, 164 A.L.R. 476.

The McCarran Act continuing state regulation and taxation of the insurance business, when construed as permitting South Carolina to continue to levy a license tax on premiums collected by foreign insurance companies in South Carolina as a condition of receiving certificate of authority to do business in South Carolina, is not an unconstitutional delegation by Congress of its power to the states. Prudential Ins. Co. v. Benjamin (U.S.S.C. 1946) 66 S.Ct. 1142, 328 U.S. 408, 90 L.Ed. 1342, 164 A.L.R. 476.

2. In general

South Carolina license fees under former Code 1962 Sections 37‑122 and 37‑130.1 were based solely on premium income from within state and were in no way connected with amount of investment activity within state or elsewhere; thus, no portion of license fees may be treated as investment expense deductible under Federal income tax laws. Liberty Life Ins. Co. v. U. S. (D.C.S.C. 1977) 439 F.Supp. 927, affirmed 594 F.2d 21, certiorari denied 100 S.Ct. 74, 444 U.S. 838, 62 L.Ed.2d 49.

Additional license fees in former Code 1962 Section 37‑122 were primarily taxes for revenue, although denominated “license fees” in the statutes by which they were imposed. State v. Life Ins. Co. of Georgia (S.C. 1970) 254 S.C. 286, 175 S.E.2d 203.

In the exercise of its functions under former Code 1962 Section 37‑130.3 of administering and collecting the license tax, the Commission had the power and the duty, in cases within the purview of former Code 1962 Section 65‑222.2, to prescribe a method for arriving at a tax base which reasonably represented the proportion of the trade or business carried on within this State. Colonial Life & Acc. Ins. Co. v. South Carolina Tax Commission (S.C. 1966) 248 S.C. 334, 149 S.E.2d 777.

3. Foreign insurers

Retaliatory statute applied in state’s action to recover additional license fees by reason of Mississippi life and casualty insurers’ improper taking of investment credits under former Code 1962 Sections 37‑123 and 37‑125 by failing to include in their calculation of the retaliatory fee schedule a sum equal to the amount a South Carolina insurer would have paid to the state of Mississippi. State v. Southern Farm Bureau Life Ins. Co. (S.C. 1975) 265 S.C. 402, 219 S.E.2d 80.

An Arkansas life insurance company was subject to the provisions of former Code 1962 Section 37‑132 so that investment credits otherwise available to it under former Section 37‑123 could not reduce the total license fee due under former Section 37‑122 below that which a South Carolina life insurance company would have to pay in Arkansas for transacting its business therein. Lindsay v. National Old Line Ins. Co. (S.C. 1974) 262 S.C. 621, 207 S.E.2d 75.

4. Reinsurance fees

Premiums collected for reinsuring another insurer’s contracts were not taxable under former Code 1962 Section 37‑130.2. Carolina Nat. Ins. Co. v. South Carolina Tax Commission (S.C. 1971) 256 S.C. 466, 182 S.E.2d 878.

Premiums collected for reinsurance contracts were not subject to taxation under former Code 1962 Section 37‑130.2; the court noted that the legislature may have been attempting to encourage reinsurance by failing to specify that reinsurance contracts were to be subject to the tax. Southeastern Fire Ins. Co. v. South Carolina Tax Commission (S.C. 1969) 253 S.C. 407, 171 S.E.2d 355.

The tax imposed under former Section 7948 of the Code of 1932 was on “total premiums” collected within the state and nothing in the language of the statute permitted the cost of reinsurance to be deducted in computing the license fees, regardless of where the contract for reinsurance was made or to what state the money was sent. King v. Aetna Ins. Co. (S.C. 1932) 168 S.C. 84, 167 S.E. 12.

**SECTION 38‑7‑30.** Tax on fire insurers to cover expenses of inspections and investigations; annual report.

 Any expenses, including expenses of counsel, detectives, and officers, incurred by the discrimination in rates, must be defrayed by the fire insurance companies doing business in this State, and a tax of one percent on the gross premium receipts less premiums returned on canceled policy contracts and less dividends and returns of unabsorbed premium deposits of all fire insurance companies is levied for this purpose, to be collected by the director or his designee as other taxes on fire insurance companies are collected. The director or his designee shall keep a separate account of all monies received and disbursed under the provisions of this section and shall include the account in his annual report. Fifty percent of the one percent tax levied in this section must be directed to the Division of Fire and Life Safety of the Department of Labor, Licensing and Regulation to be used only for expenses of this division. For fiscal year 1997‑98 only, the fifty percent of the tax levied by this section that is directed to the Department of Labor, Licensing and Regulation is capped at $2,567,325. The department shall report annually to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee where any growth above the base authorization for the preceding is expended and for what purposes within the Division of Fire and Life Safety.

HISTORY: Former 1976 Code Section 38‑7‑30 [1960 (51) 1554; 1962 Code Section 37‑173; 1982 Act No. 403, Section 3] recodified as Section 38‑63‑530 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑5‑1250 [1947 (45) 322; 1952 Code Section 37‑288; 1960 (51) 1562, 1646; 1962 Code Section 37‑288] recodified as Section 38‑7‑30 by 1987 Act No. 155, Section 1; 1987 Act No. 170, Part II, Section 17 (amendment to former 1976 Code Section 38‑5‑1250 transferred to Section 38‑7‑30 by 1987 Act No. 155, Section 24]; 1993 Act No. 181, Section 534, Part II; 1997 Act No. 155, Part II, Section 3A.

CROSS REFERENCES

Insurance companies exempt from taxes, see Section 38‑7‑180.

Library References

Insurance 1127, 1157.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71.

**SECTION 38‑7‑35.** Portion of tax on fire insurers to be used for training, certification, and continuing education program for building codes enforcement officers; annual report.

 (A) One hundred seventy‑five thousand dollars of the revenue collected annually pursuant to Section 38‑7‑30 must be transferred to the Department of Labor, Licensing and Regulation for the purpose of implementing the training, certification, and continuing education program for building codes enforcement officers as provided by law.

 (B) The Department of Labor, Licensing and Regulation shall report annually to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee detailing actual program expenditures including, but not limited to, the number of instructors employed, the number of training sessions conducted, and the number of certifications issued. This report must be submitted to the respective chairmen no later than July fifteenth of each year.

 (C) One hundred thousand dollars of the revenue collected annually pursuant to Section 38‑7‑30 must be transferred to the Department of Insurance for the purpose of implementing the program as provided in Section 38‑75‑480.

 (D) Subsection (C) of this section ceases to be of any force or effect after June 30, 2002.

HISTORY: 1997 Act No. 123, Section 4; 1997 Act No. 155, Part II, Section 29; 2000 Act No. 312, Section 3.

**SECTION 38‑7‑40.** Additional premium tax on fire insurers.

 Each fire insurer shall pay to the director or his designee an amount equal to one percent of all premiums written on fire insurance required to be reported under Section 38‑7‑70 during the preceding year ending December thirty‑first or for such portion of that period as the insurer has done business in this State.

HISTORY: Former 1976 Code Section 38‑7‑40 [1960 (51) 1554; 1962 Code Section 37‑174] recodified as Section 38‑63‑540 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑57‑120 [1947 (45) 322; 1952 Code Section 37‑1160; 1962 Code Section 37‑1160; 1978 Act No. 585, Section 11] recodified as Section 38‑7‑40 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 534.

CROSS REFERENCES

Insurance companies exempt from taxes, see Section 38‑7‑180.

Library References

Insurance 1127, 1165.

Taxation 2243.

Westlaw Topic Nos. 217, 371.

C.J.S. Insurance Sections 67 to 69, 71, 127 to 131.

C.J.S. Taxation Sections 206 to 212.

Attorney General’s Opinions

Discussion of the distribution of the funds received as part of the one percent additional premium tax on fire insurers. S.C. Op.Atty.Gen. (Nov. 4, 1998) 1998 WL 1756823.

NOTES OF DECISIONS

In general 1

1. In general

Additional license fees under former Code 1962 Section 37‑124 were primarily taxes for revenue, although denominated “license fees” in the statutes by which they were imposed. State v. Life Ins. Co. of Georgia (S.C. 1970) 254 S.C. 286, 175 S.E.2d 203.

**SECTION 38‑7‑50.** Tax on workers’ compensation insurers.

 Every insurer insuring employers in this State against liability for personal injuries to their employees or death caused by the injuries, under the provisions of Title 42, shall pay a tax upon the premiums received whether in cash or notes in this State, or on account of business done in this State, for such insurance in this State at the rate of four and one‑half percent of the amount of the premiums. For fiscal year 1990‑91, the tax is at the rate of three and one‑half percent of the amount of the premiums. For fiscal year 1991‑92 and thereafter, the tax is at the rate of two and one‑half percent of the amount of the premiums. This tax is in lieu of all other taxes on these premiums and must be assessed and collected as provided in this chapter. However, the insurers must be credited with all canceled or returned premiums actually refunded during the year on workers’ compensation insurance including any unused premiums refunded or credited to policyholders as dividends.

 If an insurer fails or refuses to make the return required by Section 38‑7‑60, the director or his designee shall assess the tax against the insurer at the rate provided for in this chapter on the amount of premiums he considers just and the proceedings thereon must be the same as if the return had been made.

HISTORY: Former 1976 Code Section 38‑7‑50 [1960 (51) 1554; 1962 Code Section 37‑175] recodified as Section 38‑63‑550 by 1987 Act No. 155, Section 1; Former 1976 Code Sections 42‑5‑140 [1936 (39) 1231; 1937 (4) 613; 1942 Code Section 7035‑76; 1952 Code Section 72‑414; 1962 Code Section 72‑414] and Section 42‑5‑160 [1936 (39) 1231; 1937 (40) 613; 1942 Code Section 7035‑76; 1952 Code Section 72‑416; 1960 (51) 1946; 1962 Code Section 72‑416] recodified as Section 38‑7‑50 by 1987 Act No. 155, Section 1; 1989 Act No. 100, Section 1; 1993 Act No. 181, Section 534.

CROSS REFERENCES

Allocation of a portion of the funds generated from the tax provide for in this section to the State Workers’ Compensation Insolvency Fund, see Section 42‑7‑200.

Library References

Workers’ Compensation 1061.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 765 to 767.

**SECTION 38‑7‑60.** Returns of premiums required; quarterly payment of taxes.

 (1) Not later than March first of each year, every insurer licensed by the director or his designee shall file with him a return of premiums collected by the insurer in the State during the immediately preceding calendar year ending on December thirty‑first. The return must be made on forms prescribed by the director or his designee and must be made under oath by the insurer’s employee or representative responsible for the preparation of fee and tax returns, as well as an officer of the insurer.

 (2) The license fees imposed in Section 38‑7‑20 must be fully reported on the return filed in accordance with subsection (1).

 (3) The premium and other taxes imposed on insurers pursuant to Sections 38‑7‑20, 38‑7‑30, 38‑7‑40, 38‑7‑50, and 38‑7‑90 must be paid to the director or his designee in quarterly installments on or before March first, June first, September first, and December first of each calendar year. The quarterly payments must be calculated and paid as follows:

 (a) The quarterly installments paid on or before June first, September first, and December first must each be computed based upon one‑fourth of the total premiums collected by the insurer during the immediately preceding calendar year ending on December thirty‑first. The quarterly installments for June first, September first, and December first must be reported on forms prescribed by the director or his designee.

 (b) The quarterly installment paid on or before March first must equal the difference between the total tax liability of the insurer for the immediately preceding calendar year ending on December thirty‑first and the sum of the quarterly installments paid by the insurer on June first, September first, and December first of that immediately preceding calendar year. The quarterly installment for March first must be reported on the returns filed in accordance with subsection (1) of this section. An insurer whose quarterly tax installments are less than one thousand dollars per payment may elect not to pay its tax liability on a quarterly basis and, instead, may elect to report and pay its entire tax liability on the return filed in accordance with subsection (1).

 (4) The director or his designee may suspend or revoke the license of any insurer which fails to make returns and pay fees and taxes as required in this section. The Attorney General shall bring suit in the name of the State to collect any unpaid portion of the fees or taxes required by law.

HISTORY: Former 1976 Code Section 38‑7‑60 [1960 (51) 1554; 1962 Code Section 37‑175.1; 1964 (53) 2139] recodified as Section 38‑63‑560 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑5‑530 [1986 Act No. 540, Part II, Section 31C] recodified as Section 38‑7‑60 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 53. 312, Section 4.

CROSS REFERENCES

County treasurer’s obligation to distribute the broker’s premium tax collected on property insurance, according to the requirements of this section, see Section 38‑45‑60.

Distribution of funds collected pursuant to this section to county treasurers for the purpose of the betterment and maintenance of skilled fire departments, see Section 23‑9‑410.

Library References

Insurance 1127.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71.

**SECTION 38‑7‑70.** Annual reports of premiums of fire insurers; allocation.

 Each fire insurer carrying on business in this State shall annually return to the director or his designee by March first a just and true account, verified by oath, of all premiums received during the preceding year ending December thirty‑first from all fire insurance on all property located or that may be located in this State and from all fire insurance business done in this State. In the report the insurer shall allocate the premiums on this business to the county in which the property is located, regardless of where the insurance is written or premiums collected.

HISTORY: Former 1976 Code Section 38‑7‑70 [1960 (51) 1554; 1962 Code Section 37‑175.2; 1964 (53) 2139; 1982 Act No. 403, Section 4] recodified as Section 38‑63‑570 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑57‑110 [1947 (45) 322; 1952 Code Section 37‑1159; 1962 Code Section 37‑1159; 1978 Act No. 585 Section 10; 1986 Act No. 540, Part II, Section 31F] recodified as Section 38‑7‑70 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 534.

Library References

Insurance 1127.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71.

Attorney General’s Opinions

Discussion of the distribution of the funds received as part of the one percent additional premium tax on fire insurers. S.C. Op.Atty.Gen. (Nov. 4, 1998) 1998 WL 1756823.

**SECTION 38‑7‑80.** Records to be kept; fraudulent returns; failure to keep records or reports or pay funds due.

 Every fire insurer shall keep accurate books of account of all business done by it on fire insurance required to be reported under the provisions of Section 38‑7‑70. If it is apparent the return is fraudulent or dishonest, the director or his designee shall investigate the return and collect the amount he finds due.

 Every fire insurer which neglects to keep books of account as required by this section, neglects or fails to report or pay any of the money due on premiums as required by Section 38‑7‑40 or 38‑7‑70, or is found upon examination to have made a false return of business done by it shall for each offense be subject to the penalty provisions of Section 38‑2‑10, to be applied to the purposes prescribed in Section 23‑9‑410.

HISTORY: Former 1976 Code Section 38‑7‑80 [1960 (51) 1554; 1962 Code Section 37‑175.3; 1964 (53) 2139; 1976 Act No. 452 Section 1; 1978 Act No. 577 Section 1; 1982 Act No. 403, Section 5] recodified as Section 38‑63‑580 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑57‑130 [1947 (45) 322; 1952 Code Section 37‑1161; 1962 Code Section 37‑1161; 1978 Act No. 585 Section 13] and Section 38‑57‑140 [1947 (45) 322; 1952 Code Section 37‑1162; 1962 Code Section 37‑1162] recodified as Section 38‑7‑80 by 1987 Act No. 155, Section 1; 1988 Act No. 374, Section 5; 1993 Act No. 181, Section 534.

CROSS REFERENCES

County treasurer’s obligation to distribute the broker’s premium tax collected on property insurance, according to the requirements of this section, see Section 38‑45‑60.

Library References

Insurance 1127, 1154.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 41, 67 to 69, 71.

**SECTION 38‑7‑90.** Retaliatory taxes, penalties, interest, and fees.

 (A) When the laws of any other state or the regulations or actions of any public official of another state subject, or would subject, insurance companies chartered by this State, or their agents or representatives, to fees, taxes, obligations, conditions, restrictions, or penalties for the privilege of doing business in that state which are greater than those required by this State of similar insurers organized or domiciled in the other state by or in this State for the privilege of doing business herein, then all similar insurers organized or domiciled in that state are subjected to the greater requirements which are or would be imposed by or in that state upon similar insurers of this State.

 (B) This section must be applied, regardless of whether an insurer chartered by this State is doing business in the other state. The application of this section is based upon a comparison of the aggregate requirements imposed by this State with the aggregate requirements imposed by the other state. Taxes, fees, or other obligations imposed by municipalities are considered in the application of this section.

 (C) This section is effective for all insurance premiums collected after December 31, 1989, and to all insurance premium tax returns filed beginning with the quarterly return due September 1, 1990, and all quarterly and annual returns filed after that time.

HISTORY: Former 1976 Code Section 38‑7‑90 [1960 (51) 1554; 1962 Code Section 37‑175.4; 1976 Act No. 452 Section 2; 1978 Act No. 577 Section 2; 1982 Act No. 403, Section 6] recodified as Section 38‑63‑590 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑5‑550 [1986 Act No. 540, Part II, Section 31E] recodified as Section 38‑7‑90 by 1987 Act No. 155, Section 1; 1990 Act No. 347, Section 1; 1993 Act No. 181, Section 534.

CROSS REFERENCES

Applicability of this section to the right of qualified insurers in Section 38‑9‑100 to the return of the deposit otherwise required of insurers offering or undertaking to become sureties, see Section 38‑15‑30.

Authority of Commissioner not to assert provisions of this section in considering an application of an insurer for purpose of filing pleading in a court action, see Section 38‑25‑550.

Library References

Insurance 1171.

Westlaw Topic No. 217.

C.J.S. Insurance Section 126.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Insurance: South Carolina retaliatory statute. 27 S.C. L. Rev. 499.

Annual Survey of South Carolina Law: Insurance: South Carolina retaliatory statute. 28 S.C. L. Rev. 359.

A Review of the Retaliatory Laws. 6 SCLQ 221 (1953).

Attorney General’s Opinions

Credit for local investments should not be disallowed Georgia companies as a retaliatory measure against that State. 1965‑66 Op.Atty.Gen, No 2040, p 115. [Under former Section 38‑5‑350.], 1966 WL 8509.

Former Code 1962 Section 37‑132 should not be construed or applied so as to disallow credit for local investments made by foreign insurance companies from Georgia in retaliation against that state, which requires South Carolina companies to pay fees equal to the basic rate charged Georgia insurers in this State and which disallowed credit for investments made by South Carolina insurers in Georgia, as the effective tax rate is substantially the same in both states. 1965‑66 Op.Atty.Gen, No 2040, p 115. [Under former Section 38‑5‑480.], 1966 WL 8509.

While a Mississippi insurance company doing business in this State has imposed on it three percent premium tax which is subject to reduction because of investments here, whereas a South Carolina company doing business in Mississippi is subject to three percent tax without privilege of reduction, Code 1962 Section 37‑132 does not require additional tax on the Mississippi company. 1964‑65 Op.Atty.Gen, No 1885, p 163. [Under former Section 38‑5‑480.], 1965 WL 8042.

NOTES OF DECISIONS

In general 1

Construction and application 2

Limitations 3

1. In general

Former Code 1962 Section 37‑132 was applicable in state’s action to recover additional license fees by reason of Mississippi life and casualty insurers’ improper taking of investment credits under Code 1962 Sections 37‑123 and 37‑125 by failing to include in their calculation of the retaliatory fee schedule a sum equal to the amount a South Carolina insurer would have paid to the state of Mississippi. State v. Southern Farm Bureau Life Ins. Co. (S.C. 1975) 265 S.C. 402, 219 S.E.2d 80.

The general purpose of retaliatory insurance laws is to protect domestic insurance companies doing business in other states; foreign insurance companies doing business in the taxing state should be subject to the same burdens as domestic insurance companies doing business in any foreign state (decided under former law). Lindsay v. Southern Farm Bureau Cas. Ins. Co. (S.C. 1972) 258 S.C. 272, 188 S.E.2d 374.

Former Code 1962 Sections 37‑123 and 37‑125 were subject to the provisions of former Section 37‑132, and, if similar investment credit is not authorized by the foreign state, then South Carolina must retaliate since the taxes imposed by the foreign state on a South Carolina insurer would be greater than the taxes imposed by South Carolina on the foreign insurer. Lindsay v. Southern Farm Bureau Cas. Ins. Co. (S.C. 1972) 258 S.C. 272, 188 S.E.2d 374.

2. Construction and application

Retaliatory laws are penal in nature and therefore should be strictly construed; but the law should not be construed so as to defeat its purpose (decided under former law). Lindsay v. Southern Farm Bureau Cas. Ins. Co. (S.C. 1972) 258 S.C. 272, 188 S.E.2d 374. Insurance 1171

3. Limitations

Where defendant failed to plead limitation of action in state’s suit under former Code 1962 Section 37‑132 to recover retaliatory fees from foreign insurance companies, trial court erred by invoking former Code 1962 Sections 65‑5.1 and 65‑322 in limiting state’s recovery to 3 of 8 years for which fees were sought. State v. Southern Farm Bureau Life Ins. Co. (S.C. 1975) 265 S.C. 402, 219 S.E.2d 80.

**SECTION 38‑7‑110.** Limitation on action by State for fees, taxes, penalties, and interest; disposition of funds recovered.

 The State may bring suit in court for back fees, taxes, penalties, and interest imposed by this title at any time within ten years from the date on which they should have been paid. On collection of the fees and taxes, they must be distributed as provided by the statutes under which they were levied.

HISTORY: Former 1976 Code Section 38‑7‑110 [1960 (51) 1554; 1962 Code Section 37‑175.6; 1982 Act No. 403, Section 10] recodified as Section 38‑63‑640 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑1‑100 [1979 Act No. 63] recodified as Section 38‑7‑110 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 534.

Library References

Insurance 1127.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 46, Insurance.

**SECTION 38‑7‑120.** Late payment of insurance fees and taxes; penalties; return of excess payment.

 (A) As soon as practicable after each tax return or other document is filed, the director or his designee, when fees and taxes are involved, shall examine the document and compute the fees and taxes due. If the fees and taxes found due are greater than the amount paid, the excess must be paid to the director or his designee within fifteen days after notice of the amount due is mailed by the director or his designee. If the amount due is not paid within the fifteen‑day period, a penalty of five percent of the amount due may be assessed.

 (B) If the additional fees and taxes found to be due upon the examination of the document are not paid within fifteen days of notice by the director or his designee, interest must be added to the amount of the deficiency at the rate of five percent for each month or fraction of a month from the date the fees or taxes originally were due until the date the deficiency is paid. The total maximum interest to be charged may not exceed twenty‑five percent.

 (C) Up to one year after the date upon which an original tax return or other document is required to be filed, an insurer or other person may file an amended return to correct errors of overpayment or other errors made by the insurer or person in the original return or document. No amended return or document may be filed by an insurer or a person or accepted by the director or his designee after one year. No tax adjustment, deduction, or credit may be made or taken by the insurer or person, or allowed by the director or his designee, on a return or document filed after one year for errors claimed to have been made by the insurer or other person in the original return or document.

 (D) If, upon examination of an original or amended return or document, it appears to the director or his designee that the amount of fees or taxes due is less than the amount paid, the excess must be ordered refunded by the or his designee. No refunds may be made with respect to monies distributable to a governmental unit after the distribution has been made.

 (E) This section does not apply to the continuation of biennial license fees for agencies, brokers, appraisers, or adjusters.

HISTORY: Former 1976 Code Section 38‑7‑120 [1960 (51) 1554; 1962 Code Section 37‑175.7] recodified as Section 38‑63‑650 by 1987 Code No. 155, Section 1; Former 1976 Code Section 38‑1‑50 [1979 Act No. 63; 1982 Act No. 321, Section 1] recodified as Section 38‑7‑120 by 1987 Act No. 155, Section 1; 1992 Act No. 501, Part II Section 11D; 1993 Act No. 181, Section 534.

CROSS REFERENCES

Application of this section to tax credits for health insurance pool, see Section 38‑74‑80.

Library References

Insurance 1127.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71.

Attorney General’s Opinions

Discussion of whether after the expiration of a one‑year period, upon determining that an insurer has made a mistake of overpayment on a tax return, is the Department of Insurance is required to make a refund or allow an offset against additional taxes due for the amount of overpayment. S.C. Op.Atty.Gen. (July 20, 1992) 1992 WL 682827.

**SECTION 38‑7‑130.** Payment of fees, taxes, penalties, or interest under protest; action for recovery.

 (a) When the State charges or levies any fees, taxes, penalties, or interest against any insurer or other person, or any fees, taxes, penalties, or interest are assessed by the director or his designee and the State or director or his designee claims the payment of the fees, taxes, penalties, or interest so charged or assessed, or institutes a proceeding to collect them, the insurer or other person against whom the fees, taxes, penalties, or interest is charged or assessed or against whom the proceeding is instituted, if he conceives the fees or taxes to be unjust or illegal, may pay the fees or taxes and any penalties, or interest thereon, under protest in writing, with the type of funds the State Treasurer or director or his designee is authorized to receive. Upon this payment, the director or his designee shall pay the fees, taxes, penalties, or interest collected by him into the state treasury giving notice at the time to the State Treasurer that the payment was made under protest.

 (b) Any insurer or other person paying any fees, taxes, penalties, or interest under protest must within thirty days after making the payment bring an action against the director for the recovery thereof, in the Court of Common Pleas for Richland County. If it is determined in that action that the fees, taxes, penalties, or interest was unjustly or illegally collected, the court must so certify of record, and the State Treasurer shall refund the fees, taxes, penalties, or interest to the payor.

HISTORY: Former 1976 Code Section 38‑1‑110 [1979 Act No. 63; 1982 Act No. 321, Section 2] recodified as Section 38‑7‑130 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 534.

Library References

Insurance 1127.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71.

NOTES OF DECISIONS

Interest 1

1. Interest

Insurance company that did not pay correct amount of license tax could not be liable for interest under former Code 1962 Section 37‑130.4 where the correct amount of the tax due under former Sections 37‑130.1 and 37‑130.2 was not determinable with certainty by the insurance company. Colonial Life & Acc. Ins. Co. v. South Carolina Tax Commission (S.C. 1966) 248 S.C. 334, 149 S.E.2d 777.

**SECTION 38‑7‑140.** Penalty for failure to pay money due or to supply information required.

 (A) It is unlawful for a person, officer or employee of an insurer, or other person, with intent to evade a requirement of this title or a lawful requirement of the director or his designee, to:

 (1) fail to pay any fees, taxes, penalties, or interest;

 (2) fail to make, sign, or verify a return;

 (3) fail to supply required information; or

 (4) make, render, sign, or verify false or fraudulent information.

 (B) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than three years, or both.

HISTORY: Former 1976 Code Section 38‑1‑70 [1979 Act No. 63] recodified as Section 38‑7‑140 by 1987 Act No. 155, Section 1; 1993 Act No. 184, Section 209; 1993 Act No. 181, Section 534.

Library References

Insurance 3642.

Westlaw Topic No. 217.

C.J.S. Insurance Section 146.

**SECTION 38‑7‑150.** Waiver or reduction of penalties or interest.

 The director or his designee may, upon making a record of his reasons therefor, waive or reduce any of the penalties or interest imposed under the provisions of this title pertaining to fees and taxes.

HISTORY: Former 1976 Code Section 38‑1‑80 [1979 Act No. 63] recodified as Section 38‑7‑150 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 534.

Library References

Insurance 1127.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71.

**SECTION 38‑7‑160.** Municipal license fees and taxes.

 This title may not be construed as preventing any municipality from levying and collecting license fees or taxes in accordance with its ordinances. However, for surplus lines insurance no municipality may charge an additional license fee or tax based upon a percentage of premiums. A municipality may not charge a license fee to fire insurers or their agents licensed by the director or his designee in any other manner than on a percentage of the premiums collected in the municipality or realized from risks located within the limits of the municipality, or both, the license fee not to exceed two percent of the premiums collected in the municipality and realized from risks located in the municipality, except in cities of fifty thousand inhabitants or more, where not exceeding five percent may be charged. Preference must be given hereunder to the municipality wherein the insured property is located, and, if a license is levied against the insuring company on such basis, that company may not be subject to a similar license from a municipality wherein it may collect the premium for such transaction.

HISTORY: Former 1976 Code Section 38‑5‑490 [1947 (45) 322; 1948 (45) 1734; 1952 Code Section 37‑133; 1953 (48) 493; 1961 (52) 273; 1962 Code Section 37‑133] recodified as Section 38‑7‑160 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 534; 2012 Act No. 283, Section 2, eff January 1, 2012.

Library References

Insurance 1127.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71.

LAW REVIEW AND JOURNAL COMMENTARIES

Nature of a Business License Tax. 32 S.C. L. Rev. 471 (March 1981).

Attorney General’s Opinions

Municipal license taxes may be collected from insurance companies and insurance agencies as both are engaged in separate businesses; Former Section 38‑5‑490 relates only to the tax upon insurance companies and agents, therefore, any other business, i.e., an insurance agency, is not subject to the limitations of such section. 1979 Op.Atty.Gen, No 79‑118, p 166. [Under former Section 38‑5‑490.], 1979 WL 43249.

An insurance company writing fire insurance policies within a municipality is subject to municipal license taxes although such company does not have a local agent or office within the municipality. 1971‑72 Op.Atty.Gen, No 3358, p 203. [Under former Section 38‑5‑490.], 1972 WL 20489.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

City ordinance, authorizing annual license fee based on gross premiums collected on insurance policies written on property or risks located within city, was exempt from Commerce Clause scrutiny because it was enacted pursuant to state’s delegation of its McCarran‑Ferguson Act immunity. City of Charleston v. Government Employees Ins. Co. (S.C. 1999) 334 S.C. 67, 512 S.E.2d 504, rehearing denied. Commerce 63.10; Insurance 1116

The fact that the license fee charged to a fire insurer by a municipality did not exceed the limitation set forth in former Code 1962 Section 37‑133 did not form a rational basis for charging fire insurers at a rate 20 times as much for a business license as most other business paid. U.S. Fidelity & Guaranty Co. v. City of Newberry (S.C. 1972) 257 S.C. 433, 186 S.E.2d 239.

Legislature, by former Code 1962 Section 37‑133, saw fit to deal with fire insurance companies as separate class, and fact that ordinance treated fire and casualty companies differently from life, health and hospital companies did not make ordinance discriminatory or unreasonable. City of Columbia v. Putnam (S.C. 1962) 241 S.C. 195, 127 S.E.2d 631. Licenses 7(3)

**SECTION 38‑7‑170.** Disposition of fees, taxes, penalties, and interest.

 All fees, taxes, penalties, and interest collected by the director or his designee under this title, unless specifically provided otherwise, must be deposited by the director or his designee in the general fund of the State.

HISTORY: Former 1976 Code Section 38‑1‑120 [1979 Act No. 63] recodified as Section 38‑7‑170 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 534.

Library References

Insurance 1127.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71.

Attorney General’s Opinions

Discussion of the distribution of the funds received as part of the one percent additional premium tax on fire insurers. S.C. Op.Atty.Gen. (Nov. 4, 1998) 1998 WL 1756823.

**SECTION 38‑7‑180.** Company exempt from taxes.

 An insurance company exempt from federal income tax pursuant to Section 501(c)(3) or (4) of the Internal Revenue Code of 1986, and which insures only churches and their property, is exempt from taxes levied on insurance companies in Sections 38‑7‑20, 38‑7‑30, 38‑7‑40, and 38‑7‑50. To provide proof of exemption from federal income tax under Section 501(c)(3) or (4) of the Internal Revenue Code of 1986, the company shall provide to the director or his designee a certificate issued by the Internal Revenue Service demonstrating the company’s tax‑exempt status. The company shall further provide evidence satisfactory to the director or his designee that it only insures churches and their property.

HISTORY: Former 1976 Code Section 38‑43‑800 [1986 Act No. 540, Part II, Section 31G] recodified as Section 38‑7‑180 by 1987 Act No. 155, Section 1; 1988 Act No. 399, Section 2; 1993 Act No. 181, Section 534; 1996 Act No. 328, Section 1.

Federal Aspects

For text of section 501(c)(3) and (4), see 26 U.S.C.A. Section 501(c)(3) and (4).

Library References

Insurance 1127.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71.

**SECTION 38‑7‑190.** Tax credits

 (A) Notwithstanding any other provision of law:

 (1) Any credits under Chapter 6, Title 12 may be applied against any taxes, license fees, and other assessments imposed under this title.

 (2) Any credits under this title which are earned by one member of a controlled group of corporations may be used and applied by that member and any other members of the controlled group of corporations.

 (3) Any limitations upon the total amount of liability for taxes that can be reduced by the use of a credit must be computed before any credit is used to reduce any tax liability under this title. Subject to item (4), the taxpayer may apply any credits arising under this title in any order the taxpayer elects.

 (4) No credit can be used more than once, and all credits must be used, to the extent possible in any given year, first by the company that earned them, and second against the tax which generated them.

 (5) As used in this section:

 (a) The term “controlled group of corporations” has the same meaning as provided under Section 1563 of the Internal Revenue Code without regard to Section 1563(a)(4), (b)(2)(A) only with respect to corporations which are in existence for less than one‑half the number of days in the tax year referred to therein, and (b)(2)(C) and (D);

 (b) The term “tax credit” or “credit” means a statutorily directed or authorized reduction in the tax liability made after any applicable tax rates are applied.

HISTORY: 1996 Act No. 231, Section 5A.

Library References

Insurance 1127.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71.

**SECTION 38‑7‑200.** Credit against premium tax.

 (A) A licensed insurer providing full property and casualty coverage, to specifically include wind and hail coverage, to property owners within the area defined in Section 38‑75‑310(5), including any portion of the area as it may be expanded from time to time pursuant to Section 38‑75‑460, may claim as a nonrefundable credit against the premium tax imposed by Sections 38‑7‑20 and 38‑7‑40 in an amount equal to twenty‑five percent of the tax that otherwise is due on the premium written for the property owners for the taxable year.

 (B) The credit allowed by this section is available only to an insurer licensed or authorized to do business in this State with respect to a property and casualty insurance policy providing full coverage as defined in subsection (A).

 (C) A licensed insurer who claims the credit allowed by this section shall provide information required by the Department of Insurance to demonstrate that the taxpayer is eligible for the credit and that the amount paid for premiums for which the credit is claimed was not excluded from the licensed insurer’s gross income for the taxable year.

 (D) The tax credit allowed under this section for a taxable year may be claimed only once for any one structure, regardless of the number of policies written on the structure.

 (E) The department shall take the action necessary to monitor and examine the use of the credits claims under this section.

HISTORY: 2007 Act No. 78, Section 5, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006; 2014 Act No. 191 (S.569), Section 2, eff June 2, 2014.

Effect of Amendment

2014 Act No. 191, Section 2, deleted former subsection (F), relating to the application of the section.

Library References

Insurance 1127.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71.