

SALT Short Takes on Oddball Taxes

Captive Insurance/Self-Procurement

Local Taxes

Unemployment Taxes

Special Assessments and Tax v. Fee Considerations

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SELF PROCUREMENT TAXES



Captive Insurance/ Self Procurement

Captive insurance company – generally defined as an insurance company that is wholly owned and controlled by its insured

- Captives are essentially a form of self-insurance whereby the insurer is owned wholly by the insured.
- They are typically established to meet the unique risk-management needs of the owners or members.
- They provide potentially significant tax advantages
 - Deduction for premiums paid to captive
 - State tax benefits when captive not subject to state income tax
- Approximately 90% of Fortune 500 companies have captive subsidiaries (per NAIC)

Captive Insurance/ Self Procurement

- Federal: Retaliatory Premium Tax (“RPT”) – an excise tax applied to premiums paid to offshore insurance companies.
- States (46 states):
 - Surplus Lines taxes
 - Self Procurement taxes
 - Independently Procured taxes
 - Non-admitted Insured taxes
 - Industrial Insured taxes

Captive Insurance/ Self Procurement

State tax differences of noncaptive v. captive

- Noncaptive insurance companies/admitted insurers
 - Pay a premium tax to the states in which they are licensed to do business.
 - Premium taxes finance the state's insurance regulatory body's consumer protection function
- Captive insurance companies
 - If the captive does business wholly outside the state, and negotiates the insurance contracts outside the state, then state lacks sufficient nexus to impose a premium tax on the captive.

Captive Insurance/ Self Procurement

- Self procurement tax
 - States will generally have statutory authority to levy and collect a self procurement tax in lieu of the premium tax upon the in-state business that buys insurance from the out of state captive.
 - States generally cannot impose the self procurement tax solely based on insured risks located in the state.
 - *State Board of Ins. v. Todd Shipyards Corp.*, 370 U.S. 451 (1962). Insurer was in London, and the insured was in New York. The fact that some of the insured property was in Texas was not sufficient to create nexus to tax the premiums.
 - *Dow Chemical Co. v. Rylander*, 38 S.W.3d 741 (Tex.App. 2001).

Captive Insurance/ Self Procurement

Self procurement taxes

Tax rates are generally higher than the premium tax rates charged to admitted insurers.

Examples:

	Premium tax rate	Self procurement tax rate
Florida	1.8%	5.3%
Georgia	2.3%	4.0%
Louisiana	0.25%	4.9%
Tennessee	2.5%	5.0%

Captive Insurance/ Self Procurement

- Insured should not be subject to a state's self procurement tax when:
 - Insured is not domiciled in the state.
 - All of the insurance agreements were contracted for, signed, issued, delivered, paid for, and accepted out of this state.
 - None of the insurers has a permit or license from the state to write insurance in the state and none of the insurers are subject to examination or subject to any control by this state.
 - None of the insurers has an office or agent in the state.
 - None of the insurers investigated or adjusted claims within the state.
 - None of the insurers ever solicited company's insurance business or policies within the state.
 - None of the insurers communicated with either company within the state.
 - All decisions relative to the purchase and renewal of insurance, extent and amount of coverage, the selection of insurers and confirmation of insurance contracts are made outside of the state.
 - Under the policies, all losses are payable out-of-state and all premiums are paid out-of-state.

Captive Insurance/ Self Procurement

Tax should be imposed only on self-insured premiums paid to the captive

- Insured pays 100% of premium to captive – tax likely due
- Insured pays captive a premium to insure a high deductible (related to a policy with an admitted insurance company) – tax likely due on the premium
- Insured engages in other transactions with the captive - tax may be due
- If captive is only taking the ceded insurance from another insurance company, tax may not be due. For example, insured pays 100% of premium to an admitted insurer, and then the admitted insurer cedes the insurance to the captive, no self procurement tax

Captive Insurance/ Self Procurement

Historically, most states have been somewhat lax in enforcing the tax

- Florida Surplus Lines Service Office has been sending out letters to Florida based companies that have been identified as owning captive insurance companies, asking for self assessment

Managing the risk

- Identify states in which risk exists and assess exposure
- Structure transactions with captive to avoid taxability
- Structure captive to subject it to premium tax
- VDAs

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Self Procurement taxes



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LOCAL TAXES



Local Taxes/Fees...A Few Examples

- **Sales taxes**
- **Property taxes**
- Public utility taxes
- Gross receipts, business license, business & occupation taxes
- Tourism: restaurant, hotel, STR, attractions, admissions taxes
- Payroll: Payroll expense, OPT, overpaid executive taxes
- “Sin”: Marijuana, e-cigarette, sweetened beverage, junk food, tanning taxes
- Excise: Alcohol, tobacco, gasoline
- Real Estate: Transfer, rental unit, empty homes taxes
- Environmental: Trash collection, pollution, climate action plan, rainwater, bag taxes
- Transportation: Parking, traffic ride share, bicycle/scooter taxes
- Public Improvement Fees, Retail Service Fees, Marketing Districts, etc. (imposed by developers)

Local Business Tax Composition

Table 2b. Local business taxes, FY21-FY22 (\$ billions)

Business tax	Local business taxes FY21*	Local business taxes FY22	% total local business taxes	One-year growth, local business taxes
Property taxes on business property	\$333.3	\$358.8	75.3%	7.7%
General sales taxes on business inputs	\$44.1	\$51.6	10.8%	17.0%
Public utility taxes	\$15.2	\$16.3	3.4%	7.2%
Excise taxes on business inputs	\$7.3	\$8.1	1.7%	10.7%
Other business taxes**	\$37.7	\$41.4	8.7%	9.8%
Total local business taxes	\$437.6	\$476.3	100.0%	8.8%

*FY21 business tax estimates are revised from the COST FY21 study because of newly released data from the U.S. Census Bureau.

**Includes local corporate income taxes.

Note: Amounts may not appear to sum because of rounding.

Source: Ernst & Young LLP estimates based on data from the U.S. Census Bureau State and Local Government Finances.

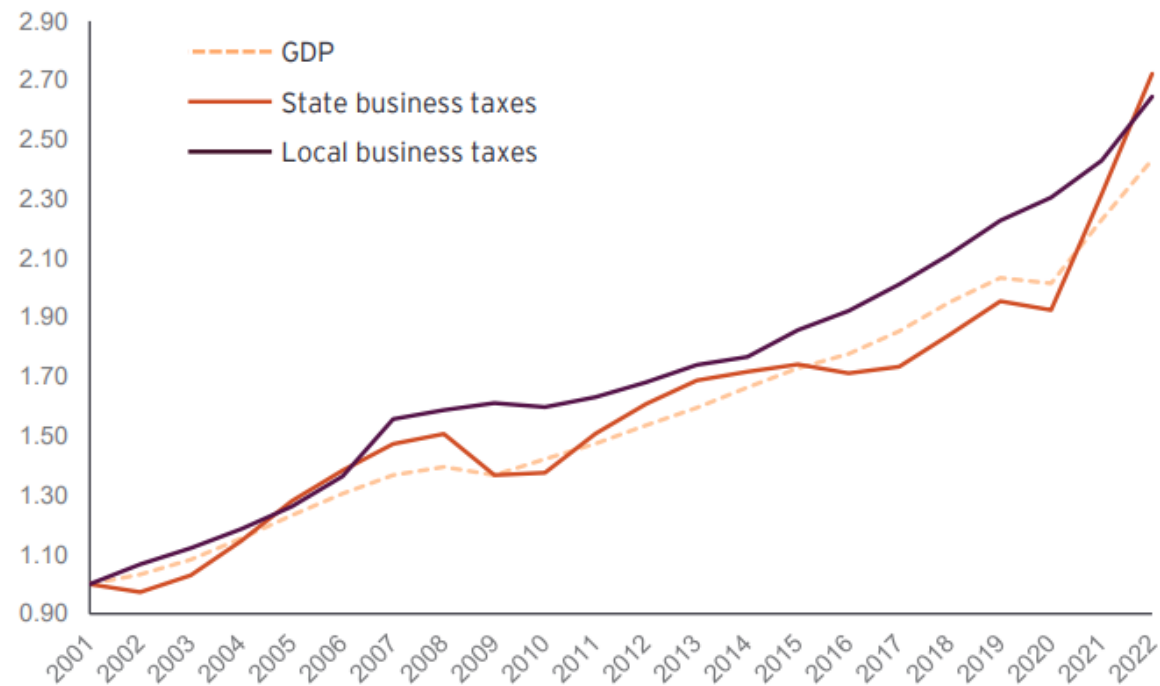
State Business Taxes FY22 = \$598.2B

Average FY22 business share of: State taxes = 40.2% / Local taxes = 51.7%

Source: EY/STRI/COST Total State and Local Business Taxes Study – December 2023

Business Tax Growth Rates

Figure 6. State, local business taxes vs. GDP, FY01-FY22
(indexed to 2001)



Source: EY/STRI/COST Total State and Local Business Taxes Study – December 2023

Policy Considerations

- Demands on local government budgets are increasing due to aging infrastructure, cuts in federal/state funding, increasing populations, etc.
- New local taxes are often easier to enact than state taxes
- Taxing activity unrelated to local voters is generally supported
- Tax policy related to social issues tends to stem from local grass roots initiatives
- Often local tax laws are drafted without the expertise of seasoned tax administrators with widespread experience
- Awareness of proposed local tax initiatives is often limited due to lawmaking process

Local Tax Practicalities

- Nexus considerations
- Availability of tax information, forms and guidance
- Disparity in administration and interpretation of local tax laws
- Lack of uniformity in compliance procedures
- Tax technology shortfalls
- Marketplace facilitator implications
- Audits and contract auditors

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UNEMPLOYMENT INSURANCE



Unemployment Insurance (UI)

- Why Relevant?
- Overview of UI “Taxes”
 - Purpose
 - Funding UI trusts
 - Employer contributions, except Alaska, New Jersey and Pennsylvania
 - Uniform, with some exceptions, due to FUTA credit
 - Worker classification – “ABC” test v. common law “direction and control”
- Administration
 - State Departments of Labor, except Florida Department of Revenue
 - Role of U.S. Department of Labor – Employment & Training Administration

UI Mechanics

- Taxable Wage Bases
 - From \$7,000 (AR, CA, FL, TN) to \$68,500 (Washington)
- Experience Rates
 - New employer rate until “experienced”
 - Benefit charges against employer account
- Localization of Work: All-or-Nothing “Waterfall”
 - Localized (ancillary) > base of operations > direction and control > residence
 - Ex-pat rules
 - Credits, reciprocal coverage, and elections
- SUTA Dumping/Payrolling Prevention
- Differences with Other Employment Taxes

UI Special Issues

- Remote Work Considerations
- Payroll Factors
 - UDITPA incorporates localization rules
 - Wage attribution rules
- Credits and Incentives
- Mergers and Acquisitions
 - Successorship and restarts
- Relationship to “New” Employment Taxes

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SPECIAL ASSESSMENTS AND TAX V. FEE CONSIDERATIONS



Occupational License and Payroll Taxes

- Local taxes outside the jurisdiction of the state taxing authority; called “fees.”
 - Example: In Kentucky, can be imposed by a city, county, school district, and/or special taxing districts such as fire, EMT, and agriculture districts.
 - Important to know which jurisdiction you’re working with.
- Primarily focused on payroll as opposed to net income.
- Common Issues
 - Remote Workers.
 - Employees living in one jurisdiction and working in another.
 - “Amtrak Rule” Considerations
 - In complex corporate structures, determining which/how many entities are subject to the tax.

IFTA Fuel Taxes - International Fuel Tax Agreement

- Fun Fact: States are constitutionally barred from entering into compacts governing commerce without Congress' approval – i.e., the impetus of taxpayer challenges to the Multistate Tax Compact and Commission.
- IFTA is one of the first, and perhaps only, Multistate Agreements covering taxes that has been approved by Congress.
- It is an interstate agreement on collecting and distributing motor carrier fuel taxes under the National Governors Association via allocating fuel taxes paid based on miles traveled in the state.

Environmental/Storm Water/Fees and Permits

Storm Water Fees

- Impervious vs. pervious property

Street Sweeping and Street/Parking Lot Light Fees

- Intended for store frontage beautification and clean up
- Who benefits?

Business Licenses

- Is it applicable? Interstate Commerce may already grant the right to do business.

911 Fees

- Public Perception Considerations

Note: Is it Worth the Fight?

Independent Contractor Re-Classifications to Employees

- Very Complex – and involves multiple agencies, each with their own rules and which act independent of the other agencies and their determinations.

Unemployment Insurance, Income Withholding, Wage & Hour, Benefit Plans,

Can impact your general accounting for expenses and taxes due.

- A single worker re-classified can impact that worker AND “others similarly situated.”
- Burden of proof is on the Company, the presumption is all workers are employees.
- These are VERY fact intensive challenges – know the agency you are dealing with.
- Common Challenge Areas: Contractors indefinitely working at your company.
- The IRS and most states use the “Common Law Test” for determining employees v. contractor status.

- Do not treat a single individual's case as de minimus because an agency's decision often covers "those similarly situated."
- Make sure you are given the resources to handle the audits ("reports") and appeals. The assessments can be large, it can impact HR Benefit Plans as well as accounting for wages.
- Keep a list of outside advisors who have dealt with the agency. These audits and appeals tend to move quickly.
- Watch procedure b/c the agencies sometimes don't follow their procedures.