SUMMARY

QUESTION: For purposes of the salary tax credit under s. 624.509(5), F.S., can the salaries of a corporate managing general agent be allocated to the insurance companies for which the corporate managing general agent is the licensed managing general agent? If so, how should the allocation of the salary paid by the managing general agent be made to the various insurance companies for which managing general agent is the licensed managing general agent?

ANSWER - Based on Facts Below: Florida Statutes providing for the salary tax credit specifically allow the salaries paid to a managing general agent to be included in the credit calculation. Since a managing general agent can be a corporation, the salaries paid by the managing general agent to its employees can be included in the salary tax calculations of the insurer's for which the managing general agent is licensed provided the managing general agent's employees meet the other requirements of s. 624.509(5), F.S., namely that they are located or based in Florida and are covered by the provisions of Chapter 443, F.S. The salaries of the managing general agent should be apportioned to each of the insurers, for purposes of the salary tax credit, using a consistent methodology that relates to the amount of time the managing general agent's employees performed services for each company. However, the amount of the managing general agent salaries allocated to a specific insurance company may not exceed the amount paid by that insurer to the managing general agent for such services.

June 8, 2006

Re: Technical Assistance Advisement 06B8-001
Insurance Premium Tax - Salary Credit - Corporate Managing General Agent
Subsection 624.509(5), F.S.
XXX (hereinafter referred to as "Managing General Agent")
XXX, and XXX (hereinafter referred to as "Taxpayers")

Dear :

Your letter dated XX, requests a Technical Assistance Advisement concerning whether the Taxpayers, insurance entities within the brother sister group, may claim part of the Florida salaries of Managing General Agent, a related brother sister entity, for the salary credit under s. 624.509(5), F.S. This response to your request constitutes a Technical Assistance Advisement under Chapter 12-11, Florida Administrative Code, and is issued to you under the authority of s. 213.22, Florida Statutes.

FACTS

There are numerous entities, including Taxpayers and Managing General Agent, that are members of a brother sister group all owned by one individual. Managing General Agent is licensed in the state of Florida by the Office of Insurance Regulation, Department of Financial Services, as a managing general agent. The original issue date of the

appointment as a managing general agent for each of the Taxpayers (members of the brother sister group) ranges from XXX to XXX.

Managing General Agent is the exclusive managing general agent of the insurance companies in the brother sister group and provides all of the back-office operations and employees for all the related entities. Such operations include product design, rate filings, underwriting, premium collections, claims settlements, customer service, accounting, financial reporting and administrative services. All of the employees of the brother sister group are reported as employees of Managing General Agent for unemployment compensation purposes.

QUESTION

For purposes of the salary tax credit under s. 624.509(5), F.S., can the salaries of Managing General Agent be allocated to the insurance companies for which Managing General Agent is the licensed managing general agent? If so, how should the allocation of the salary paid by the Managing General Agent be made to the various insurance companies for which Managing General Agent is the licensed managing general agent?

LAW

Section 624.04, F.S., provides:

"Person" includes an individual, insurer, company, association, organization, Lloyds, society, reciprocal insurer or interinsurance exchange, partnership, syndicate, business trust, corporation, agent, general agent, broker, service representative, adjuster, and every legal entity.

Subsections 624.509(5) and (6), F.S., provides:

(5)(a)1. **There shall be allowed a credit against the net tax imposed by this section equal to 15 percent of the amount paid by an insurer in salaries to employees located or based within this state and who are covered by the provisions of chapter 443.**

2. As an alternative to the credit allowed in subparagraph 1., an affiliated group of corporations which includes at least one insurance company writing premiums in Florida may elect to take a credit against the net tax imposed by this section in an amount that may not exceed 15 percent of the salary of the employees of the affiliated group of corporations who perform insurance-related activities, are located or based within this state, and are covered by chapter 443. For purposes of this subparagraph, the term "affiliated group of corporations" means two or more corporations that are entirely owned directly or indirectly by a single corporation and that constitute an affiliated group as defined in s. 1504(a) of the Internal Revenue Code. The amount of credit allowed under this subparagraph is limited to the combined Florida salary tax credits allowed for all insurance companies that were members of the affiliated group of corporations for the tax year ending December 31, 2002, divided by the combined Florida taxable premiums written by all insurance companies that were members of the affiliated group of corporations for the tax year ending December 31, 2002, multiplied by the combined Florida taxable premiums of the affiliated group of corporations for the current year. An affiliated group of corporations electing this alternative calculation method must

make such election on or before August 1, 2005. The election of this alternative calculation method is irrevocable and binding upon successors and assigns of the affiliated group of corporations electing this alternative. However, if a member of an affiliated group of corporations acquires or merges with another insurance company after the date of the irrevocable election, the acquired or merged company is not entitled to the affiliated group election and shall only be entitled to calculate the tax credit under subparagraph 1.

In no event shall the salary paid to an employee by an affiliated group of corporations be claimed as a credit by more than one insurer or be counted more than once in an insurer's calculation of the credit as described in subparagraph 1. or subparagraph 2. Only the portion of an employee's salary paid for the performance of insurance-related activities may be included in the calculation of the premium tax credit in this subsection.

(b) For purposes of this subsection:

1. **The term "salaries" does not include amounts paid as commissions.**

2. **The term "employees" does not include independent contractors or any person whose duties require that the person hold a valid license under the Florida Insurance Code, except adjusters, managing general agents, and service representatives, as defined in s. 626.015.**

3. The term "net tax" means the tax imposed by this section after applying the calculations and credits set forth in subsection (4).

4. An affiliated group of corporations that created a service company within its affiliated group on July 30, 2002, shall allocate the salary of each service company employee covered by contracts with affiliated group members to the companies for which the employees perform services. The salary allocation is based on the amount of time during the tax year that the individual employee spends performing services or otherwise working for each company over the total amount of time the employee spends performing services or otherwise working for all companies. The total amount of salary allocated to an insurance company within the affiliated group shall be included as that insurer's employee salaries for purposes of this section.

a. Except as provided in subparagraph 2., the term "affiliated group of corporations" means two or more corporations that are entirely owned by a single corporation and that constitute an affiliated group of corporations as defined in s. 1504(a) of the Internal Revenue Code.

b. The term "service company" means a separate corporation within the affiliated group of corporations whose employees provide services to affiliated group members and which are treated as service company employees for unemployment compensation and common law purposes. The holding company of an affiliated group may not qualify as a service company. An insurance company may not qualify as a service company.

c. If an insurance company fails to substantiate, whether by means of adequate records or otherwise, its eligibility to claim the service company exception under this section, or its salary allocation under this section, no credit shall be allowed.

5. A service company that is a subsidiary of a mutual insurance holding company, which mutual insurance holding company was in existence on or before January 1, 2000, shall allocate the salary of each service company employee covered by contracts with members of the mutual insurance holding company system to the companies for which the employees perform services.**(FN 1)** The salary allocation is based on the ratio of the amount of time during the tax year which the individual employee spends performing services or otherwise working for each company to the total amount of time the employee spends performing services or otherwise working for all companies. The total amount of salary allocated to an insurance company within the mutual insurance holding company system shall be included as that insurer's employee salaries for purposes of this section. However, this subparagraph does not apply for any tax year unless funds sufficient to offset the anticipated salary credits have been appropriated to the General Revenue Fund prior to the due date of the final return for that year.

a. The term "mutual insurance holding company system" means two or more corporations that are subsidiaries of a mutual insurance holding company and in compliance with part IV of chapter 628.

b. The term "service company" means a separate corporation within the mutual insurance holding company system whose employees provide services to other members of the mutual insurance holding company system and are treated as service company employees for unemployment compensation and common-law purposes. The mutual insurance holding company may not qualify as a service company.

c. If an insurance company fails to substantiate, whether by means of adequate records or otherwise, its eligibility to claim the service company exception under this section, or its salary allocation under this section, no credit shall be allowed.

(c) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this subsection.

(6) The total of the credit granted for the taxes paid by the insurer under chapters 220 and 221 and the credit granted by subsection (5) shall not exceed 65 percent of the tax due under subsection (1) after deducting therefrom the taxes paid by the insurer under ss. 175.101 and 185.08 and any assessments pursuant to s. 440.51. (Emphasis Supplied)

Subsections 626.015(1), (14), and (17), F.S., provide:

(1) "Adjuster" means a public adjuster as defined in s. 626.854, independent adjuster as defined in s. 626.855, or company employee adjuster as defined in s. 626.856.

(14)(a) "**Managing general agent" means any person managing all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and acting as an agent for that insurer, whether known as a managing general agent, manager, or other similar term, who, with or without authority, separately or together with affiliates, produces directly or indirectly, or underwrites an amount of gross direct written premium equal to or more than 5 percent of the policyholder surplus as reported in the last annual statement of the insurer in any single quarter or year and also does one or more of the following:**

1. **Adjusts or pays claims.**

2. Negotiates reinsurance on behalf of the insurer.

(b) The following persons shall not be considered managing general agents:

1. An employee of the insurer.

2. A United States manager of the United States branch of an alien insurer.

3. An underwriting manager managing all the insurance operations of the insurer pursuant to a contract, who is under the common control of the insurer subject to regulation under ss. 628.801-628.803, and whose compensation is not based on the volume of premiums written.

4. Administrators as defined by s. 626.88.

5. The attorney in fact authorized by and acting for the subscribers of a reciprocal insurer under powers of attorney.

(17) "Service representative" means an individual employed by an insurer or managing general agent for the purpose of assisting a general lines agent in negotiating and effecting insurance contracts when accompanied by a licensed general lines agent. A service representative shall not be simultaneously licensed as a general lines agent in this state. This subsection does not apply to life insurance. (Emphasis Supplied)

Section 628.801, F.S., states:

Every insurer which is authorized to do business in this state and which is a member of an insurance holding company shall register with the office and be subject to regulation with respect to its relationship to such holding company as provided by rule or statute. The commission shall adopt rules establishing the information and form required for registration and the manner in which registered insurers and their affiliates shall be regulated. The rules shall apply to domestic insurers, foreign insurers, and commercially domiciled insurers, except a foreign insurer domiciled in states that are accredited by the National Association of Insurance Commissioners by December 31, 1995. Except to the extent of any conflict with this code, the rules must include all requirements and standards of ss. 4 and 5 of the Insurance Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation of the National Association of Insurance Commissioners, as the Regulatory Act and the Model Regulation existed on January 1, 1997, and may include a prohibition on oral contracts between affiliated entities. Upon request, the office may waive filing requirements under this section for a domestic insurer that is the subsidiary of an insurer that is in full compliance with the insurance holding company registration laws of its state of domicile, which state is accredited by the National Association of Insurance Commissioners.

Section 626.88(1), F.S., provides:

For the purposes of this part, the term:

(1) "Administrator" is any person who directly or indirectly solicits or effects coverage of, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with authorized commercial self-insurance funds or with insured or self-insured programs which provide life or health insurance coverage or coverage of any other expenses described in s. 624.33(1) or any person who, through a health care risk contract as defined in s. 641.234 with an insurer or health maintenance organization, provides billing and collection services to health insurers and health maintenance organizations on behalf of health care providers, other than any of the following persons:

(a) An employer or wholly owned direct or indirect subsidiary of an employer, on behalf of such employer's employees or the employees of one or more subsidiary or affiliated corporations of such employer.

(b) A union on behalf of its members.

(c) An insurance company which is either authorized to transact insurance in this state or is acting as an insurer with respect to a policy lawfully issued and delivered by such company in and pursuant to the laws of a state in which the insurer was authorized to transact an insurance business.

(d) A health care services plan, health maintenance organization, professional service plan corporation, or person in the business of providing continuing care, possessing a valid certificate of authority issued by the office, and the sales representatives thereof, if the activities of such entity are limited to the activities permitted under the certificate of authority.

(e) An entity that is affiliated with an insurer and that only performs the contractual duties, between the administrator and the insurer, of an administrator for the direct and assumed insurance business of the affiliated insurer. The insurer is responsible for the acts of the administrator and is responsible for providing all of the administrator's books and records to the insurance commissioner, upon a request from the insurance commissioner. For purposes of this paragraph, the term "insurer" means a licensed insurance company, health maintenance organization, prepaid limited health service organization, or prepaid health clinic.

(f) A nonresident entity licensed in its state of domicile as an administrator if its duties in this state are limited to the administration of a group policy or plan of insurance and no more than a total of 100 lives for all plans reside in this state.

(g) An insurance agent licensed in this state whose activities are limited exclusively to the sale of insurance.

(h) A person licensed as a managing general agent in this state, whose activities are limited exclusively to the scope of activities conveyed under such license.

(i) An adjuster licensed in this state whose activities are limited to the adjustment of claims.

(j) A creditor on behalf of such creditor's debtors with respect to insurance covering a debt between the creditor and its debtors.

(k) A trust and its trustees, agents, and employees acting pursuant to such trust established in conformity with 29 U.S.C. s. 186.

(l) A trust exempt from taxation under s. 501(a) of the Internal Revenue Code, a trust satisfying the requirements of ss. 624.438 and 624.439, or any governmental trust as defined in s. 624.33(3), and the trustees and employees acting pursuant to such trust, or a custodian and its agents and employees, including individuals representing the trustees in overseeing the activities of a service company or administrator, acting pursuant to a custodial account which meets the requirements of s. 401(f) of the Internal Revenue Code.

(m) A financial institution which is subject to supervision or examination by federal or state authorities or a mortgage lender licensed under chapter 494 who collects and remits premiums to licensed insurance agents or authorized insurers concurrently or in connection with mortgage loan payments.

(n) A credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized such collection if such company does not adjust or settle claims.

(o) A person who adjusts or settles claims in the normal course of such person's practice or employment as an attorney at law and who does not collect charges or premiums in connection with life or health insurance coverage.

(p) A person approved by the department who administers only self-insured workers' compensation plans.

(q) A service company or service agent and its employees, authorized in accordance with ss. 626.895-626.899, serving only a single employer plan, multiple-employer welfare arrangements, or a combination thereof.

(r) Any provider or group practice, as defined in s. 456.053, providing services under the scope of the license of the provider or the member of the group practice.

(s) Any hospital providing billing, claims, and collection services solely on its own and its physicians' behalf and providing services under the scope of its license.

A person who provides billing and collection services to health insurers and health maintenance organizations on behalf of health care providers shall comply with the provisions of ss. 627.6131, 641.3155, and 641.51(4).

Rule 12B-8.001, F.A.C., states in part:

...

(3)(b) **Salaries. Fifteen percent of the amount paid after June 30, 1988, in salaries by the insurer to employees located or based in Florida may be credited against the net tax imposed by s. 624.509, F.S.**

1. Salaries include only amounts paid directly to employees and do not include commissions paid to employees located or based in Florida.

2. Employees are those covered under Chapter 443, F.S., Unemployment Compensation, by the insurer taking the credit, a service representative as defined in s. 626.081, F.S., a supervising or managing general agent as defined in s. 626.091, F.S., and an adjuster or claims investigator as defined in s. 626.101, F.S.

3. Salary credit shall be allowed only to the extent that:

a. The employees are not disqualified under s. 624.509(5), F.S.;

b. The employees are located or based in Florida; and

c. The insurer claiming the credit is the employer, as defined in s. 443.036(17), F.S., of the claimed employees, and said insurer satisfies the Chapter 38B-2, F.A.C., filing requirements.

4. Employees do not include independent contractors or any persons whose duties require them to have a valid insurance license issued under the Florida Insurance Code.

5. The wages paid to an individual who is employed directly by an employment agency, such as a temporary agency or a leasing company, are not included.

6. Net tax is the tax imposed under s. 624.509(1), F.S., after deductions for the corporate income tax imposed under Chapter 220, F.S., the emergency excise tax imposed under Chapter 221, F.S., and for gross premium receipts tax payable for firefighter's pension trust funds under s. 175.101, F.S., and police officers' retirement funds under s. 185.08, F.S.

...

(4) The maximum allowable credit for corporate income tax, emergency excise tax and salaries cannot exceed sixty-five percent of the tax due under s. 624.509(1), F.S., after deducting the taxes paid under ss. 175.101 and 185.08, F.S., and assessments pursuant to s. 440.51, F.S.

(5) Any insurer paying assessments made under s. 440.51, F.S., shall be allowed to take such amounts as a deduction against the amount of any other tax levied by the state upon the premiums, assessments, or deposits for workers' compensation insurance on contracts or policies of said insurance carrier, self-insurer, or commercial self-insurance fund.

(6) Credits and deductions against the tax imposed by ss. 624.509 and 624.510, F.S., shall be taken in the following order:

(a) Deductions for assessments under s. 440.51, F.S.

(b) Credits for taxes paid under ss. 175.101 and 185.08, F.S.

(c) Credits for corporate income taxes paid under Chapter 220, F.S.

(d) Credits for the emergency excise tax paid under Chapter 221, F.S.

(e) Salary tax credit.

(f) All other available credits and deductions.

(g) A refund will not be created by credits.
... (Emphasis Supplied)

DISCUSSION AND ANALYSIS OF LAW

A credit, based upon the salaries paid to an insurer's employees as outlined in s. 624.509(5), F.S., is provided for the insurance premium tax imposed under s. 624.509(1), F.S.**(FN 2)** Specifically, to claim a salary credit all of the following basic requirements must be met:

1. The salaries must be "paid by the insurer;"

2. The claimed employees must be "located or based within this state;" and

3. The provisions of Chapter 443, F.S, must cover such employees.

After outlining the basic criteria for claiming this credit the Florida Legislature provided further guidance relative to the administration of this credit. In particular, s. 624.509(5), F.S., provides in part:

1. Salaries do not include amounts paid as commissions;

2. The term "employee" does not include:

(a) Independent contractors, or

(b) Persons required to hold a valid licenseunder the Florida Insurance Code except:

- Service Representatives

- Adjusters

- Managing General Agents

Key to the question raised by the Taxpayers is whether the salaries paid by Managing General Agent are excluded under s. 624.509(5), F.S. To determine this, the role of Managing General Agent must be analyzed further. As was noted earlier, Managing General Agent is the managing general agent for the Taxpayers. It is clear from the language in s. 624.509(5)(b), F.S., that an insurer can claim the salaries it paid to a managing general agent against its insurance premium tax. However, what if the managing general agent is a corporation rather than an individual; would that be allowed? After researching the legislative history there is evidence that such a situation was contemplated by

the Legislature.

In s. 626.015(14), F.S., a managing general agent is defined as:

... any person managing all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and acting as an agent for that insurer, whether known as a managing general agent, manager, or other similar term, who, with or without authority, separately or together with affiliates, produces directly or indirectly, or underwrites an amount of gross direct written premium equal to or more than 5 percent of the policyholder surplus as reported in the last annual statement of the insurer in any single quarter or year and also does one or more of the following:

1. Adjusts or pays claims.

2. Negotiates reinsurance on behalf of the insurer.

(b) The following persons shall not be considered managing general agents:

1. An employee of the insurer.

2. A United States manager of the United States branch of an alien insurer.

3. An underwriting manager managing all the insurance operations of the insurer pursuant to a contract, who is under the common control of the insurer subject to regulation under ss. 628.801-628.803, and whose compensation is not based on the volume of premiums written.

4. Administrators as defined by s. 626.88.

5. The attorney in fact authorized by and acting for the subscribers of a reciprocal insurer under powers of attorney.

Section 624.04, F.S., defines person as:

"Person" includes an individual, insurer, company, association, organization, Lloyds, society, reciprocal insurer or interinsurance exchange, partnership, syndicate, business trust, corporation, agent, general agent, broker, service representative, adjuster, and every legal entity.

Therefore, it is not a requirement of the Florida Insurance Code that a managing general agent be an individual; it can be a corporation such as Managing General Agent. In fact, the Florida Office of Insurance Regulation, Department of Financial Services does license corporations as managing general agents, as it did for Managing General Agent. Given the fact that a managing general agent can be a corporation such as Managing General Agent, then the salaries paid by Managing General Agent can be used by the insurers for which Managing General Agent is a licensed managing general agent, when calculating the salary tax credit of the insurers, provided none of the restrictions of s. 626.015(14)(b), F.S., apply.

CONCLUSION

After carefully considering the facts presented and the applicable Florida Statutes the Department finds the following:

1. Managing General Agent is a licensed managing general agent that performs its contractual responsibility for the Taxpayers (other entities within its brother sister group).

2. Florida Statutes providing for the salary tax credit specifically allow the salaries paid to a managing general agent to be included in the credit calculation.

3. A managing general agent can be a corporation; thus the salaries paid by Managing General Agent to its employees can be included in Taxpayers' salary tax calculations provided Managing General Agent's employees meet the other requirements of s. 624.509(5), F.S., namely that they are located or based in Florida and are covered by the provisions of Chapter 443, F.S. Further, historical legislative documents exist that indicate the Florida Legislature contemplated this result when they enacted the salary tax credit.

4. The salaries of Managing General Agent should be apportioned to each of the Taxpayers, for purposes of the salary tax credit, using a consistent methodology that relates to the amount of time the Managing General Agent's employees performed services for each Taxpayer. However, the amount of Managing General Agent Salaries allocated to a specific Taxpayer may not exceed the amount paid by that Taxpayer to the Managing General Agent for such services.

This response constitutes a Technical Assistance Advisement under s. 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice as specified in s. 213.22, F.S. Our response is based on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this advice is based may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of s. 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

Sincerely,

Robert DuCasse
Technical Assistance and Dispute Resolution

RCD/
Record ID: 21008

FOOTNOTE 1. On June 20, 2005, Governor Bush vetoed the appropriation to fund this alternative salary credit. Since no appropriation has been made to fund this alternative salary credit calculation, it is not a valid alternative.

FOOTNOTE 2. The issue being addressed in this Advisement does not involve the alternative salary tax credit computations or situations. Therefore, they are not being addressed.