

Title: Insurance Premium Tax, Special Apportionment

Sep 16, 1992

RE: Technical Assistance Advisement-TAA 92(B)8-001(B)
Insurance Premium Tax; Return Premiums and Overpayments
Sections 624.509 and 624.511, F.S.

Dear

This is in response to your request for a technical assistance advisement on behalf of XX, (hereinafter referred to as "Taxpayer").

You requested a refund of premium taxes overpaid in 1989 in the amount of \$37,221.24, less an annual statement filing fee of \$60.00, resulting in a net amount of \$37,161.24.

FACTS PRESENTED BY TAXPAYER

On XXX, Taxpayer was placed under the supervision of the XXX Department of Insurance due to problems caused by insolvent or non-performing reinsurers. Due to the Taxpayer's continued financial problems, an Order for Rehabilitation for the taxpayer was entered on XXX. The Taxpayer has instituted remedial measures under the direction of the XXX, pursuant to the Order for Rehabilitation to combat financial difficulties.

One of the specific requirements of the order of Supervision was that the Taxpayer shall not write any new or renewal insurance business in any jurisdiction without the prior written approval of the XXX. As a result of the Order of Supervision, the Taxpayer ceased writing all business on a nationwide basis, effective XXX. Consequently, the Taxpayer has not written any new or renewal insurance business in Florida since XXX.

Because it ceased writing new business, cancellations of the previously written business have resulted in the Taxpayer

reporting negative premiums written on its Florida state premiums report for Calendar year 1990 of (\$1,519,229).

Since the premiums processed in 1990 are cancellation refunds on 1989 and prior written premiums, it stands to reason then that the Taxpayer may need to file amended 1989 and prior year premium tax returns resulting in refunds of the 1989 and prior year premium tax overpayments.

STATUTORY AUTHORITY

In reference to overpayments of insurance premium taxes, section 624.511(2), F.S., states in part:

"... if any insurer makes an overpayment on account of taxes due under ss. 624.509 and 624.510, a refund of the overpayment of taxes shall be made out of the General Revenue Fund. Overpayment of taxes due under ss. 624.509 and 624.510 shall be refunded no sooner than the first day of the state fiscal year following the date the tax was due."

In reference to return premiums, the pertinent part of section 624.509(1)(a), F.S., states the premium tax is based on:

"An amount equal to 1.75 percent of the gross amount of such receipts on account of life and health insurance policies covering persons resident in this state and on account of all other types of policies and contracts... covering property, subjects, or risks located, resident, or to be performed in this state, omitting premiums on reinsurance accepted, and less return premiums or assessments..."

DETERMINATION

Upon review of the documentation attached to your request, it appears the Taxpayer overpaid their premium taxes for the 1989 year in an amount equal to \$36,273.20. As referenced previously, section 624.511(2), F.S., allows for overpayments of premium taxes to be refunded no sooner than the first day of the

state fiscal year following the date the tax was due. According to our refund section, a warrant for the requested amount for the 1987 year was sent to the Taxpayer on XXX.

I was unable to make a determination as to how the requested refund amount of \$37,161.24 specified in your letter was derived. The amount requested and paid to the Taxpayer as a result of the 1989 overpayment was \$36,273.20, and the amount requested for the 1990 year was \$10,574.11.

For the 1990 year, it appears the Taxpayer is requesting a refund of \$10,574.11 as a result of return premiums. Per section 624.509(1)(a), F.S., return premiums may only be offset against direct premiums written, and since there were no premiums written by the Taxpayer in 1990, an offset cannot take place. No refund for the 1990 year return premiums should be granted to the Taxpayer. Nor is there any need for the Taxpayer to amend its 1989 return, as return premiums may only be credited against premiums written in the year in which the premiums were returned.

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 predicted 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 the different treatment than expressed in this response.

You are further advised that this response and your request are public records under Chapter 119, F.S., which are subject to disclosure to the public under the conditions of section 213.22, F.S. Your name, address, and any other details which might lead to identification of the taxpayer must be deleted by the Department before disclosure. In an effort to protect confidential information, we request you notify the undersigned in writing within 15 days of any deletions you wish made to the request or this response.

Sincerely,

Joy B. Eldred
Technical Assistant
Statutory Compliance Section B

JBE/tb#2384