

TAX: Insurance Premium Tax

TAA NUMBER: 10B8-001

ISSUE: Annuity Premiums

STATUTE CITE(S): 624.509(8), F.S.

RULE CITE(S): 12B-8.001, F.A.C.

QUESTION: Whether Taxpayer is eligible for the waiver of tax provided for in 624.509(8), Florida Statutes

ANSWER: Yes – subject to verification through audit. Taxpayer has provided a statement from actuary that indicates that Taxpayer is in compliance with section 624.509(8), F.S.

August 19, 2010

XXX

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XXX

Re: Technical Assistance Advisement 10B8-001
Insurance Premium Tax – Premium Tax Savings Derived and
Credited to the Holders
Section 624.509(8), Florida Statutes
XXX, hereinafter referred to as “Taxpayer”

Dear XXX:

Your letter dated XXX, requests a Technical Assistance Advisement concerning whether the Taxpayer is eligible for the waiver of tax provided for in section 624.509(8), 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 section 213.22, Florida Statutes.

FACTS

Taxpayer is licensed in Florida to provide life, accident, and health insurance, as well as XXX annuities. Taxpayer has been licensed in Florida since XXX.

Taxpayer’s Request for Technical Assistance provides the following:

It is the taxpayer’s understanding that either of the following situations would allow the taxpayer to receive the waiver of tax in s. 624.509, F.S.

- If the taxpayer charges the premium tax for those states that currently have a front-end tax (Maine, South Dakota, and Wyoming), but not Florida
- If when the taxpayer computes the rate of return required by the company, the expenses include premium taxes for those states that have a front-end tax, but not Florida

In addition, Taxpayer has provided a letter from its XXX actuary XXX, attesting to the following, in pertinent part.:

I certify that we are in compliance with the state of Florida requirement. We charge policyholders who purchase immediate annuities a premium load to cover the front-end tax in each of the 3 states listed, consistent with

the first bullet. There is a convenient method of applying the charge to only consumers of those states when it is an immediate annuity sale.

...[W]e do not pass directly the cost of deferred annuity taxation, but rather spread the costs amongst deferred annuity owners in all states. We do this by assessing the adequacy of margins in covering all expenses, included premium taxes not covered by the premium loads on immediate annuities, before declaring new and/or renewal credited rates in order to meet the rate of return required by the company on deferred annuities. This is consistent with the second bullet.

...[W]e do not build into our expense assumptions a Florida premium tax, and it does not figure into our rate of return calculations. We also have never charged Florida policyholders directly or indirectly through the crediting rate. Again, this is [in] compliance with the second bullet.

QUESTION

Is Taxpayer eligible for the waiver of tax provided in section 624.509(8), Florida Statutes?

APPLICABLE LAW

Section 624.509, F.S., states in part:

(1) In addition to the license taxes provided for in this chapter, each insurer shall also annually, and on or before March 1 in each year, except as to wet marine and transportation insurance taxed under s. 624.510, pay to the Department of Revenue a tax on insurance premiums, premiums for title insurance, or assessments, including membership fees and policy fees and gross deposits received from subscribers to reciprocal or interinsurance agreements, and on annuity premiums or considerations, received during the preceding calendar year, the amounts thereof to be determined as set forth in this section, to wit:

(a) 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 **(except annuity policies or contracts taxable under paragraph (b))** 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, but without deductions:

1. For reinsurance ceded to other insurers;
2. For moneys paid upon surrender of policies or certificates for cash surrender value;
3. For discounts or refunds for direct or prompt payment of premiums or assessments; and
4. On account of dividends of any nature or amount paid and credited or allowed to holders of insurance policies; certificates; or surety, indemnity, reciprocal, or interinsurance contracts or agreements; and

(b) An amount equal to 1 percent of the gross receipts on annuity policies or contracts paid by holders thereof in this state.

(2) Payment by the insurer of the license taxes and premium receipts taxes provided for in this part of this chapter is a condition precedent to doing business within this state.

(8) From and after July 1, 1980, the premium tax authorized by this section **shall not be imposed upon receipts of annuity premiums or considerations paid by holders in this state if the tax savings derived are credited to the annuity holders.** Upon request by the Department of Revenue, any insurer availing itself of this provision shall submit to the department evidence which establishes that the tax savings derived have been credited to annuity holders. As used in this subsection, the term "holders" shall be deemed to include employers contributing to an employee's pension, annuity, or profit-sharing plan.

(9) As used in this section "insurer" includes any entity subject to the tax imposed by this section. (Emphasis Supplied)

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

(1) A tax is imposed on insurance premiums or assessments, including membership fees, finance charges, and policy fees and gross deposits received from subscribers to reciprocal or interinsurance agreements, and on annuity premiums or considerations, received during the preceding calendar year. Such tax is imposed no matter whether the insurer possesses a valid Florida certificate of authority, if the issuing or collecting insurer would have been required to obtain a certificate of authority prior to issuing these policies and contracts or collecting premiums on them. The administration, auditing, collection, and enforcement of the insurance premium taxes and assessments are vested in the Department of Revenue, with the exception of taxes under Chapters 175 and 185, F.S., where the Department's only functions are collection and maintenance of a database. "Policies and premiums" respectively mean and include those policies or other contracts or agreements effecting and evidencing insurance, and premiums and other considerations for such policies as described and contemplated by the provisions of Sections 624.509 and 624.510, F.S.; or any other sections subject to the provisions of Section 624.509, F.S. Per-policy fees charged under Section 626.7451(11), F.S., by licensed managing general agents fall under the definition of "premiums" as defined in Section 627.403, F.S., and are subject to premium tax as set forth in Section 624.509, F.S.

(b) Annuity policies or contracts. A tax at the rate of 1 percent shall be applied on the gross receipts on annuity policies or contracts paid by holders thereof in Florida.

1. The premium tax authorized by this section shall not be imposed upon receipts of annuity premiums or considerations paid by holders in this state if the tax savings derived are credited to annuity holders.

2. As used in this subsection, the term "holders" shall include employers contributing to an employee's pension, annuity, or profit sharing plan.

3. This tax is assessed and must be accrued by the insurer when the annuity premium is received, not when the annuity benefits are due and payable or when the annuity is otherwise terminated. For the purposes of this subparagraph, annuity premiums are received when consideration is remitted by one wishing to purchase an annuity contract and is subsequently accepted by an insurer as payment for the issuance of an annuity contract to a named individual annuitant. Such remittances may either be in the form of a lump sum payment or a series of payments. Each payment is subject to the tax described in this section.

DISCUSSION

Florida is one of a few states that impose a premium tax on annuities. Maine, South Dakota, and Wyoming are some of the other states that impose a premium tax on annuities. Florida's premium tax on annuities is very similar to the taxes imposed in Maine, South Dakota, and Wyoming. However, there is one major difference. Florida law provides for an exception or credit to the tax on annuities. If the Taxpayer can show that the tax savings derived from not paying the Florida premium tax on annuities, are passed on to the annuity holders, then Florida's annuity premium tax is not imposed. *See s. 624.509(8), F.S.*

Taxpayers may demonstrate that the tax savings from not paying the tax on annuities are passed on to the annuity holders in three different ways.

1. The taxpayer demonstrates that the rate of return on an annuity for Florida annuity holders is greater than the rate of return on an annuity for annuity holders in states that impose a premium tax on annuities, and the difference is a direct result of the premium tax. The taxpayer must also demonstrate that the rate of return on an annuity for Florida annuity holders is the same as the rate of return for annuity holders in states that do not impose a premium tax on annuities.
2. The taxpayer demonstrates that Florida annuity holders are credited with a greater portion of their initial investment than annuity holders in states that impose a premium tax on annuities, and the difference is attributable to the premium tax. The taxpayer must also demonstrate that Florida annuity holders are credited with the same portion of their initial investments as annuity holders in states that do not impose a premium tax on annuities.
3. The taxpayer demonstrates that it's actuary took into account premium taxes in states that impose a premium tax on annuities and no premium tax for Florida and states that do not have a premium tax when determining the rate of return and amounts to charge annuity holders. The actuary's determination is only applicable when all annuity holders are treated identically (same rate of return and credited with the same portion of their initial investment).

CONCLUSION

Based on the facts provided, the Taxpayer meets the requirements of section 624.509(8), F.S.

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,

Terrence (Terry) Branch
Tax Law Specialist
Technical Assistance & Dispute Resolution
(850) 922-4715

Record ID: 86041

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