

FINAL PRIVATE LETTER RULING

REQUEST LETTER

09-004

August 25, 2008

Utah Department of Revenue
210 North 1950 West
Salt Lake City UT 84134

RE: Request for Private Taxpayer Ruling
Taxpayer: COMPANY
ADDRESS
FEIN #####

To Whom It May Concern:

2ND COMPANY has been engaged by COMPANY, to obtain a private taxpayer ruling from the Utah State Tax Commission (the “Commission”) addressing whether COMPANY is subject to corporate franchise tax. Please find enclosed a signed Utah Power of Attorney and Declaration of Representative authorizing 2ND COMPANY to represent COMPANY in this matter. We respectfully request guidance from the Commission confirming the analysis and conclusions that have been set forth in this letter.

I. FACTS

Background

COMPANY is a STATE domiciled insurance company and a wholly owned indirect subsidiary of CORP. COMPANY was formed in ##### exclusively to provide benefits as a prescription drug plan under the federal government’s Medicare Part D program, which is administered by the Centers for Medicare and Medicaid Services (CMS). COMPANY commenced operations on DATE.

From inception, COMPANY has solely offered Medical Part D plans to eligible participants in all 50 states, the District of Columbia and the territories of Puerto Rico and the US Virgin Islands. As of DATE, COMPANY was licensed as an insurer in 36 states and the District of Columbia and has filed expansion applications to become a licensed insurer in the states where it is required to do so, and will file applications in the remaining states upon satisfaction of seasoning requirements. COMPANY operates under a waiver from CMS in the states where it is not licensed. In addition to filing license applications, COMPANY zero liability gross premiums tax returns in all applicable states, including Utah.¹

¹ Title 42 C.F.R. §423.440(b) State premium taxes prohibited – (1) Basic rule. No premium tax, fee, or other similar assessment may be imposed by any State, The District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa, the Mariana Islands or any of their political subdivisions or other

Utah does not impose the corporate franchise tax on insurance companies otherwise taxed on its premiums under Chapter 9, Taxation of Admitted Insurers. U.C.A. §59-7-102(1)(c). However, Title 42 C.F.R. §423.440 pre-empts state law and prohibits states from imposing a tax, fee or similar assessment on the premiums paid to Medicare Part D plan sponsors.

II. QUESTIONS PRESENTED

1. Is COMPANY subject to the Utah gross premiums tax, even though its Medicare Part D premiums are exempt pursuant to federal law?
2. If COMPANY is subject to Utah gross premiums tax, then is COMPANY exempt from Utah corporate franchise tax?

III. RULING REQUEST

1. COMPANY is an insurance company subject to the Utah gross premiums tax, regardless of the fact that Medicare Part D premiums are exempt from gross tax pursuant to federal law. Further, because COMPANY is subject to the Utah gross premiums tax, COMPANY is exempt from Utah corporate franchise tax.

IV. LAW

Medicare Part D premiums are federally subsidized premiums received for prescription drug benefits provided to Medicare beneficiaries in the United States. States are prohibited, by federal statute, from imposing a premiums tax or fee on such receipts. Specifically, Federal law does not allow states to impose a premiums tax, fee or other similar assessment on any payment CMS makes on behalf of Medicare Part D plan or enrollees or on any payment made to Medicare Part D plans by a beneficiary or by a third party on behalf of a beneficiary. Title 42 C.F.R. §423.440(b).

Utah Annotated Code §59-7-104(1) provides:

“Each domestic and foreign corporation, except those exempted under Section 59-7-102, shall pay an annual tax to the state based on its Utah taxable income for the taxable year for the privilege of exercising its corporate franchise or for the privilege of doing business in the state.”

Section 59-7-102, as referenced above, specifically exempts:

“[An] insurance company that is otherwise taxed on the insurance company’s premiums under Chapter 9, Taxation of Admitted insurers.”

Utah Annotated Code, Chapter 9, Section 59-9-101(1)(a) provides:

governmental authorities for any payment CMS makes on behalf of Part D plan or enrollees under this part (including the direct subsidy, reinsurance payments, and risk corridor payments): or for any payment made to Part D plans by a beneficiary or by a third party on behalf of a beneficiary.

“ . . . every admitted insurer shall pay to the commission on or before March 31 in each year, a tax of 2-1/4% of the total premiums received by it during the preceding calendar year from insurance covering property or risks located in this state.”

V. ANALYSIS

COMPANY is subject to the total premiums tax as an insurance company and files its gross premiums tax report with the Commissioner [*sic*] on a timely basis. U.C.A §59-9-101(1)(a). However, pursuant to Title 42 C.F.R. §423.440(b), all of COMPANY’S receipts are exempt from Utah premiums tax as Medicare Part D premiums. Thus, although COMPANY maintains an insurer’s license and is therefore subject to the gross premiums tax, COMPANY does not ultimately incur a gross premiums tax liability. The intent of the Utah legislature in subjecting all insurance companies to the premiums tax and thus exempting them from the franchise tax should not change solely because federal law specifically exempts Medicare Part D premiums. Therefore, despite the exempt status of its premiums, COMPANY constitutes an insurance company “subject to” the gross premiums tax under Section 59 of the Utah Annotated Code and is therefore exempt from corporate franchise tax under Section 59-7-102.

VI. CONCLUSION

Although, pursuant to federal law, 100% of its premiums are exempt from Utah gross premiums tax, COMPANY constitutes an insurance company subject to the Utah statutes governing the taxation of insurance companies, and is therefore subject to the Utah gross premiums tax. COMPANY should be exempt from Utah corporate franchise tax as an insurance company subject to premiums tax.

COMPANY would appreciate a tax ruling at your earliest convenience. If you have any questions or would like to discuss this matter further, please do not hesitate to call me at (###) ###-#### or 2ND NAME at (###) ###-####.

Sincerely,

NAME
Partner, State and Local Taxes

Enclosure

Cc: 3RD NAME, 2ND COMPANY
2ND NAME, 2ND COMPANY

RESPONSE LETTER

April 13, 2010

NAME
ADDRESS

RE: Private Letter Ruling Request–Determination of the Tax Treatment of an Insurance Company for the Utah Gross Premiums Tax and the Utah Corporate Franchise Tax

Dear NAME:

You have requested a ruling on behalf of your client, COMPANY. In your letter, you explained that COMPANY is a STATE-domiciled insurance company and a wholly-owned indirect subsidiary of CORPORATION. You also explained that COMPANY was formed in ##### exclusively to provide benefits as a prescription drug plan under the federal government's Medicare Part D program, which is administered by the Centers for Medicare and Medicaid Services (CMS). You stated that COMPANY offers its Medicare Part D plans in all 50 states, the District of Columbia, Puerto Rico, and the US Virgin Islands. You said that COMPANY files zero liability gross premium tax returns in all applicable states, including Utah. Also, during a telephone conversation on DATE, your associate, 4TH NAME, stated that COMPANY is an admitted insurer as defined in Utah Code Ann. § 31A-1-301(163)(b) and that COMPANY is licensed under Utah Code, Title 31A, Chapter 14, as a Foreign Insurer.

You presented two questions:

1. *Is COMPANY subject to the Utah gross premiums tax, even though its Medicare Part D premiums are exempt pursuant to federal law?*
2. *If COMPANY is subject to Utah gross premiums tax, then is COMPANY exempt from Utah corporate franchise tax?*

I. Applicable Law

Utah Code, Title 31A, titled Insurance Code, defines “admitted insurer” and distinguishes it from “unauthorized insurer,” as follows:

- (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer" means an insurer:
 - (i) not holding a valid certificate of authority to do an insurance business in this state; or
 - (ii) transacting business not authorized by a valid certificate.
- (b) "Admitted insurer" or "authorized insurer" means an insurer:

- (i) holding a valid certificate of authority to do an insurance business in this state; and
- (ii) transacting business as authorized by a valid certificate.

Utah Code Ann. § 31A-1-301(163).

Utah Code 31A-3-205, titled “Taxation of Insurance Companies,” provides that “[a]n admitted insurer shall pay taxes imposed on the admitted insurer by Title 59 . . .”

Utah Code, Title 59, Chapter 9, is titled “Taxation of Admitted Insurers” and imposes a premiums tax on “an admitted insurer” in Utah Code Ann. § 59-9-101(1). However, Utah Code Ann. § 59-9-101(5) to (5)(g) specifies certain admitted insurers are not subject to the premium tax on health care insurance that would otherwise be applicable under subsection (1).

Utah Code, Title 59, Chapter 7, titled “Corporate Franchise and Income Taxes,” specifically exempts “an insurance company that is otherwise taxed on the insurance company’s premiums under Chapter 9 . . .” from taxes imposed under Chapter 7. Utah Code Ann. § 59-7-102(1)(c).

II. Analysis

Because you asked two specific questions, the Commission will respond separately to each question:

1. *Is COMPANY subject to the Utah gross premiums tax, even though its Medicare Part D premiums are exempt pursuant to federal law?*

COMPANY is governed by the Chapter 9 tax on premiums, whether or not any tax is actually due. The Commission addressed a situation similar to that of COMOPANY in Private Letter Ruling (“PLR”) 08-003, a redacted copy of which is attached. In that case, the taxpayer was an insurance company that provided only Medicare Part D prescription drug plans throughout the 50 states and the District of Columbia. The taxpayer was licensed as a life and health insurance company under Utah Code, Title 31A, Chapter 5. In that case, we stated:

[Company] indicates that it is an admitted insurer licensed under Title 31A, Chapter 5, Domestic Stock and Mutual Insurance Corporations. This licensure would trigger Utah Code §59-9-101(5)(a), and would provide that [Company] is “not subject to the premium tax on health care insurance that would otherwise be applicable under” Utah Code §59-9-101(1).

You have provided that COOMPANY is an admitted insurer, like the insurance company in PLR 08-003. However, COMPANY is licensed under Title 31A, *Chapter 14*, unlike the insurance company in PLR 08-003, licensed under Title 31A, Chapter 5. Yet, even with this difference, the application of § 59-9-101(5) is the same. COMPANY’S licensure under Title 31A, Chapter 14, as a foreign insurer triggers § 59-9-101(5), which provides that COMPANY is “not subject to the premium tax on health care insurance that would otherwise be

applicable under” § 59-9-101(1). Therefore, although COMPANY is subject to Title 59, Chapter 9, which imposes the Utah premiums tax, the company is exempt from that tax under § 59-9-101(5) to (5)(g). We do not analyze the federal law because we have already found that COMPANY is exempt under state law.

2. *If COMPANY is subject to Utah gross premiums tax, then is COMPANYt exempt from Utah corporate franchise tax?*

COMOPANY is exempt from Utah corporate franchise tax. Section 59-7-102(1)(c) specifically exempts from Utah corporate franchise tax “an insurance company that is otherwise taxed on the insurance company’s premiums under Chapter 9 . . .” In PLR 08-003, we stated:

Historically, the Commission has interpreted the phrase “otherwise taxed” in Utah Code §59-7-102(1)(c) to mean admitted insurers that are taxed as part of a state plan to tax those insurers on the basis of premiums. Absent direction to the contrary from the legislature, the Commission has no plans to depart from its previous interpretation which provides that ***admitted insurers are not subject to income or franchise taxes because they are more properly treated under the insurance premium taxation provisions of the Code.***

(Emphasis added.)

Like the company in PLR 08-003, COMPANY is not subject to Utah corporate income or franchise tax because it is otherwise taxed on its premiums under the Utah Code Ann. Title 59, Chapter 9.

III. Conclusion

The Commission approves this ruling by a 3-1 vote.¹ The Commission finds that COMPANY is an insurance company subject to the Utah premiums tax, regardless of the fact that Medicare Part D premiums are exempt from the tax pursuant to § 59-9-101(5). Further, because COMPANY is subject to the Utah premiums tax, COMPANY is exempt under § 59-7-102(1)(c) from Utah corporate franchise tax. This ruling, of course, is based on current law and could be changed by subsequent legislative action or judicial interpretation. Also, our conclusions are based on the facts as described. Should the facts be different, a different conclusion may be warranted. If you feel we have misunderstood the facts as you have presented them, you have additional facts that may be relevant, or you have any other questions, you are welcome to contact the Commission.

For the Commission,

D’Arcy Dixon Pignanelli

¹ Commissioner Marc Johnson believes the term “otherwise taxed” means that the legislature intended for admitted insurers to be exempt from an income or franchise tax only if they actually pay the premiums tax. He would have, however, made this ruling prospective.

Commissioner

Enclosure

DDP/aln
09-004