04-0787
Audit
Signed 04/15/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	
	)	**ORDER**
	)	
Petitioner,	)	Appeal No. 04-0787
	)	
v.	)	Account No. #####
	)	Tax Type: Insurance Premium Tax
AUDITING DIVISION OF THE	)	Audit Period: 01-01-00 – 12/31/00
UTAH STATE TAX COMMISSION,	)	
	)	Judge: Chapman
Respondent.	)	

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REPRESENTATIVE 1
PETITIONER REPRESENTATIVE 2
PETITIONER REPRESENTATIVE 3
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Telephonic Status Conference on November 3, 2004. Based upon the agreement reached by the parties at the conference, the matter was submitted to the Tax Commission for a decision based upon the briefs the parties had submitted. The briefs submitted include: 1) a September 30, 2004 letter memorandum from PETITIONER REPRESENTATIVE 1 on behalf of PETITIONER; 2) an October 14, 2004 Reply to Memorandum in Support of Petitioner's Position from RESPONDENT REPRESENTATIVE 1 of behalf of Auditing Division ("Division"); and 3) an

October 28, 2004 letter memorandum from PETITIONER REPRESENTATIVE 2 on behalf of PETITIONER.

The only remaining issue from the audit assessment concerns the base amount on which the insurance premium tax is calculated. Prior to the year at issue, PETITIONER had reported its tax based on the amount of insurance premiums written. For the 2000 tax year, however, PETITIONER calculated and reported its tax based on the amount of insurance premiums collected (total written premiums minus "the change in accounts receivable for premiums written but not collected"). Asserting that Utah law requires the premium tax to be calculated on total written premiums, the Division assessed PETITIONER additional tax, penalty, and interest. PETITIONER, however, contends that the Division's interpretation is inconsistent with the plain meaning of the statutory language and asks the Commission to overturn the Division's assessment as it relates to this issue.

APPLICABLE LAW

Utah Code Ann. §59-9-101 provides for the taxation of admitted insurers as follows:

> (1)(a) . . . every admitted insurer shall pay to the commission . . . 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.
> . . .
> (c) The taxable premium under this Subsection (1) shall be reduced by:
> (i) all premiums returned or credited to policyholders on direct business subject to tax in this state;

> (ii) all premiums received for reinsurance of property or risks located in this state; and
>
> (iii) the dividends, including premium reduction benefits maturing within the year, paid or credited to policyholders in this state or applied in abatement or reduction of premiums due during the preceding calendar year.

DISCUSSION

Utah law requires the insurance premium tax to be calculated on "total premiums received." The term "total premiums received," however, is not defined in statute or administrative law. The Division asks the Commission to interpret "total premiums received" to mean "direct premiums written," a specific designation appearing on PETITIONER'S "Exhibit of Premiums and Losses," which accompanies the annual statement that PETITIONER files with the Utah Department of Insurance each year. "Direct premiums written" includes premiums charged on all policies, whether or not those premiums are collected. The Petitioner, on the other hand, believes that the plain meaning of the statutory term "total premiums received" precludes the inclusion of premiums that are not collected, as the insurer has not received payment of these premiums.

The Division contends that Section 59-9-101(1) only allows the "direct premiums written" amount to be reduced by three specific deductions, of which a deduction for uncollected premiums is not part. However, the Division misstates the statute. The three deductions are reductions to the "taxable premium under this Subsection (1)," which is identified in Subsection (1)(a) as "total premiums received," not "direct premiums written." Until the Commission interprets the meaning of "total premiums received," it is premature to assume that the three deductions are reductions to "direct premiums written."

The Division also contends that the Utah Supreme Court clarified "total premiums received" to mean "direct premiums written" in *Utah Farm Bureau Insurance Co. v. State Tax Commission*, 347 P.2d 179 (Utah 1959). Specifically, the Court explained that imposition of a tax on "total premiums received . . . means that the tax is imposed on all premiums as of the time they are received and not when they are earned." The Court further stated that, according to authorities as identified in 84 C.J.S. Taxation §167, p.325, "a premium is earned and becomes the property of the company, for the purpose of taxation, as soon as the premium is received and the risk begins, notwithstanding it may be held subject to future contingency."

In *Utah Farm Bureau*, however, the Court considered whether a premium written and already collected, on which risk had already begun, should be deducted from "total premiums received" when a company refunded a portion of the premium without canceling any policies. The Court concluded that, because risk has been incurred, a premium received is subject to tax even if a portion of the premium is refunded in the future. In the case at hand, PETITIONER has written policies on which it has not collected any premiums. *Utah Farm Bureau* does not discuss whether risk has been incurred when an insurer has never collected a premium on a policy. Nor has either party addressed whether risk was assumed on the policies for which the premium amount is at issue. Without such information, the Commission is unable to conclude what effect, if any, *Utah Farm Bureau* has on the audit issue before it.

The Petitioner contends that the Commission should interpret "total premiums received" to mean "total premiums written for the year, reduced by the change in accounts receivable

for premiums written but not collected," as reported on its Schedule T, arguing that the statutory language clearly requires such an interpretation. However, the Petitioner cites no authority to support its contention. In addition, in its letter from PETITIONER REPRESENTATIVE 2, the Petitioner suggests that the premiums at issue may be considered "received" because PETITIONER'S written premiums are considered a "receivable" for accounting purposes until such time that it is deemed uncollected and a "change" made to the receivables account.

After reviewing the arguments presented in the written briefs submitted by both parties, the Commission finds that neither party has sustained its specific position or argument. The Commission believes that that "premiums collected" is a better interpretation of the term "premiums received," as written in subsection (1)(a). The Taxpayer proposes that the term means "total premiums written for the year, reduced by the change in accounts receivable for premiums written but not collected." That definition alone more closely meets the Commission's interpretation. The Division's request that a definition of "premiums written" be applied is without merit in and of itself.

In any case, however, the definition of that single term must be considered within the context of subsection (1)(c) as well. In other words, the entire process of collecting the tax must be examined, as opposed to one stage of the process, in order to ensure the appropriate tax is collected.

Section 59-9-101(1)(c)(i) and (iii) allow deductions for premiums "returned or credited" and for dividends "paid or credited to policyholders . . or applied in abatement or reductions of premiums due during the preceding calendar year." Under PETITIONER'S interpretation, premiums due during the preceding calendar year, but not paid, would not have been included in the tax base in the preceding year. Because a credit or abatement would be given the policyholder, only the net amount actually paid in current year would be includible in the tax base. Yet, under 59-9-101(1)(c)(iii), an abatement or reduction of those premiums would further reduce the tax. This is clearly a double benefit that cannot have been intended. Furthermore, when considering the "change in accounts receivable for premiums written but not collected," the Commission finds that the Taxpayer provided insufficient explanation as to the exact process that is used. Thus, other potential for double benefits might inure to PETITIONER.

From a policy point-of-view, it would seem to make little difference which method is used, as long as it is used consistently.[1] There is sufficient language in the statute, read as a whole, to support the Auditing Division's position that it's method is appropriate

DECISION AND ORDER

1 It appears that PETITIONER is arguing, at least in part, for a "cash receipts and disbursements" method of accounting, while the Division is arguing for an "accrual" method. Both are generally recognized methods of accounting that may be used in appropriated circumstances. See, generally, Section 446© of the Internal Revenue Code (26 U.S.C.) Each method, however, must be used consistently to ensure that income is fairly stated. Utah Code Ann. § 59-9-101 contains terminology from both methods.

Based on the briefs that the parties submitted in this matter, the Commission finds that, for purposes of calculating the insurance premium tax, the amount of tax collected by the Division's overall methodology more accurately reflects the intent of the statute. In addition, the Petitioner did not separately contest the imposition of the penalty and interest. Accordingly, the Commission sustains the Division's audit assessment in its entirety, and denies the Petitioner's appeal. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

DATED this _____ day of _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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