05-0280
Audit
Signed 02/23/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	
	)	**ORDER**
	)	
Petitioner,	)	Appeal No. 05-0280
	)	
v.	)	Account No. #####
	)	Tax Type: Insurance Premium Tax
AUDITING DIVISION OF THE	)	Audit Period: 01-01-01 – 12/31/03
UTAH STATE TAX COMMISSION,	)	
	)	Judge: Phan
Respondent.	)	

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REPRESENTATIVE 1, Attorney at Law
PETITIONER REPRESENTATIVE 2, Tax Unit Manager
PETITIONER REPRESENTATIVE 3
PETITIONER REPRESENTATIVE 4
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Audit Manager, Miscellaneous Tax Division
RESPONDENT REPRESENTATIVE 3, Tax Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to Utah Code Sec. 59-1-502.5, on December 12, 2005. Petitioner is appealing the audit deficiency of additional tax and interest for the period of January 1, 2001 through December 31, 2003. The Statutory Notice was issued on February 15, 2005. The amount of the tax at issue is $$$$$. Interest as of the date of the Statutory Notice was $$$$$. Interest continues to accrue on any unpaid balance.

There were no facts in dispute in this matter. The only issue was a question of law regarding the interpretation of the statute imposing the insurance premium tax set out at Utah Code Sec. 59-9-101(1). The section provides that insurer 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.” Despite the plain language of the statute the Division has continually based the amount of the insurance premium tax on the total premiums written, not the total premiums received. Obviously there may be a difference between these two amounts based on premiums that are not collected.

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

As Petitioner's representative has pointed out in this matter the statute at issue is a tax imposition statute. The tax is imposed on the "total premiums received." See Utah Code Sec. 59-9-101. The fact that it is a tax imposition statute as opposed to a tax exemption statute is significant as the Utah Courts have indicated that tax imposition statutes are construed liberally in favor of the taxpayer, while exemption statutes are construed differently.[1]

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 "total premiums written," a specific designation appearing on the "Exhibit of Premiums and Losses," which accompanies the annual statement that Petitioner and other admitted insurers file with the Utah Department of Insurance. "Direct premiums written" includes premiums indicated on all policies, whether or not those premiums are collected. The Division argues that the statute should be interpreted to mean "premiums written" for the ease of administration. Insurance companies must report the amount of premiums written to the Utah Department of Insurance, which, the Division argues, reviews and verifies the numbers. The Division points out it is a non-burdensome way for both the Division and the insurance companies to determine the amount of tax. Additionally the Division indicates that it did survey how other states had been calculating the insurance premium

1 In Board of Equalization of Wasatch County v. Tax Commission and Strawberry Water Users Association, 944 P.2d 370, 374 (Utah 1997), the Utah Supreme Court held, "our practice is to construe taxation statutes liberally in favor of the taxpayer, leaving it to the legislature to clarify an intent to be more restrictive is such intent exists." See also Airport Hilton Ventures, Ltd., v. Utah State Tax Comm'n., 976 P.2d 1197 (Utah 1999); and Parsons Asphalt Products, Inc. v. Utah State Tax Comm'n, 617 P.2d 397, 398 (Utah 1980).

tax. They had called tax divisions in states where the statute, like the Utah statute, indicated the tax was based on premiums received. The Division representatives report that the other state tax departments reported told them over the telephone that they calculated the amount based on premiums written, despite the statutory language indicating premiums received.

The Petitioner argues that the plain meaning of the statutory term "total premiums received" indicates that the insurance premium tax is imposed only on the premiums that are actually collected. Petitioner points out that there is no Tax Commission Rule or published policy guidelines that support the Division's interpretation. Petitioner indicates the only written guidance from the Tax Commission on this issue was a hand written note signed by (X), a former Tax Audit Manager. (X) had written on the bottom of a letter submitted by one of Petitioner's affiliate companies. (X's) note stated "as discussed with you on the phone, the "received basis is satisfactory under current law."

Petitioner also argues that in the other states where the statutory language imposing the insurance premium tax states that the tax is based on "premiums received," Petitioner calculates its tax by deducting out the amount of premiums that were not collected. Petitioner points to a decision from the Supreme Court of Iowa, Iowa Mutual Tornado Insurance Association v. Charles R. Fischer, Commission of Insurance, 65 N.W.2d 162 (1954) that supports this position. This information is in conflict somewhat with the Division's report that it had called these other state tax departments who reported, that despite their state statute, they based the tax on the "premiums written."

Petitioner points out that there are states whose tax imposition statutes indicate the tax is based on "premiums written." In those states Petitioner calculates its tax based on its total premiums written. Petitioner argues that if the Utah legislature intended to impose the tax on the total premiums written in should have worded the statute in that manner.

After reviewing all the arguments in this matter, and in making its determination on this issue, the Tax Commission follows the court's instruction on statutory interpretation. First the Commission considers the statute's plain language. The courts have indicated the Commission should resort to other methods of statutory interpretation only if the language is ambiguous, additionally the Commission presumes the words and phrases of the statute were chosen carefully and advisedly.[2] The statutes do not define "total premiums received." Therefore, the Commission interprets the statutory term according to its usually accepted meaning[3], which in this case obviously indicates funds actually received as has been argued by Petitioner. Under these guidelines the Commission must conclude that the insurance premium tax is imposed only on the premiums received during the year.

The Commission notes that it had issued a prior decision regarding the insurance tax premium in Appeal No. 04-0787. In the prior case it had found in favor of the Division. In that case

2 In Gull labs., Inc. v. Utah State Tax Comm'n, 936 P.2d 1082 (Ct. App. 1997, the court stated, "[I]in construing any statute, "we first examine the statute's plain language and resort to other methods of statutory interpretation only if the language is ambiguous." Accordingly, we read the words of a statue literally unless such a reading is unreasonably confused or inoperable, and give the words their usual and accepted meaning. Third, the reviewing court does not look beyond plain and unambiguous language to ascertain legislative intent. Finally, we presume that the "statue is valid and that the words and phrases used were chosen carefully and advisedly." *Citing* US Express, Inc. v. Utah State Tax Comm'n, 886 P.2d 1115, 1117 (Utah Ct. App. 1994).

the Commission noted that Utah Code Sec. 59-9-101(1), which imposes the tax, contains language that suggests an accrual based method of accounting considering the deductions listed at subsection (1)(c), as well as seemingly refers to a cash based method with the reference under subsection (1) (a) to "premiums received." To clarify its decision in Appeal No. 04-0787, the Commission found for the Division because the nature and extent of the deductions taken by the Petitioner were unclear and insufficiently supported.

In the appeal at hand Petitioner's representative has explained and supported its deductions and accounting method. Additionally, the information indicated that Petitioner's treatment of the deductions had been consistent for a number of years. Given that the statute at issue is a tax imposition statute, and that it is clear that the insurance premium tax is imposed only on premiums received, Petitioner's tax filings are more reflective of the statute than the Division's audit deficiency.

DECISION AND ORDER

Based on the forgoing, the Commission abates the audit deficiency, issued by Statutory Notice dated February 14, 2005, for the audit period of January 1, 2001, through December 31, 2003. 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

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3 Morton Int'l, Inc. v. Auditing Div. of Utah State Tax Comm'n, 814 P.2d 581, 590 (Utah 1991).

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.

DATED this _____ day of ____________, 2006.

____
Jane Phan
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

DATED this _________ day of ________________________, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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