



State of Louisiana
Department of Revenue

Private Letter Ruling
Redacted Version
No. 10-018

October 14, 2010

Corporation Franchise Tax
Medicare Part D Insurance Corporation not Exempt

This is in reply to your request submitted on behalf of Taxpayer Insurance Company for a private letter ruling to determine whether Taxpayer is subject to Louisiana corporate franchise tax.

FACTUAL SCENARIO

You provided these facts:

Background

Taxpayer is a non-Louisiana domiciled insurance company and a wholly-owned indirect subsidiary of Parent. Taxpayer was formed in 2005 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). Taxpayer commenced operations on January 1, 2006.

From inception, Taxpayer has solely offered Medicare 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 December 31, 2007, Taxpayer 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. Taxpayer operates under a waiver from CMS in the states where it is not licensed. In addition to filing license applications, Taxpayer files zero liability gross premiums tax returns in all applicable states, including Louisiana.¹

Louisiana does not impose the state franchise tax on insurance companies that pay the premiums tax under Title 22 of the Louisiana Revised Statutes of 1950. Section 47:608(10) La. R.S. However, Title 42 C.F.R. § 423.440 preempts state law and prohibits states from imposing a gross premiums tax, fee or similar assessment on the premiums paid to Medicare Part D plan sponsors.

TAXPAYER'S DISCUSSION OF 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

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 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.

Contributing to a better quality of life.

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).

Section 47:601(3)A La. R.S. provides that the corporate franchise tax shall be applied to:

"Every domestic corporation and every foreign corporation, exercising its charter, or qualified to do business or actually doing business in this state, or owning or using any part or all of its capital, plant, or any other property in this state, subject to compliance with all other provisions of law..."

However, the Louisiana franchise tax does not apply to:

"Insurance companies paying a premiums tax under Title 22 of the Louisiana Revised Statutes of 1950." § 47:608(10) La. R.S.

Section 22:1061.A La. R.S. imposes:

"...an annual license tax for the year 1982, and for each subsequent year, on each domestic, foreign, and alien insurer engaged in the business of issuing insurance policies, contracts, or obligations... Such license shall ... be based on the gross amount of annual premiums on all risks, except annuity contracts, located in this state..."

The Insurance title also provides:

"No insurer paying the license taxes levied under this Part shall be liable for any franchise or capital stock tax." § 22:1069 La. R.S.

TAXPAYER'S ANALYSIS

Taxpayer is subject to the state gross premiums tax under Louisiana Revised Statutes §22:1061.A as an insurance company and files its gross premiums tax returns on a timely basis. However, pursuant to Title 42 C.F.R. § 423.440(b), all of Taxpayer's receipts are exempt from Louisiana gross premiums tax as Medicare Part D premiums. Thus, although Taxpayer maintains an insurer's license and is therefore subject to the gross premiums tax, Taxpayer does not ultimately incur a gross premiums tax liability. The intent of the Louisiana legislature in subjecting all insurance companies to the gross premiums tax and thus exempting them from the franchise tax should not change solely because federal law specifically exempts Medicare Part D premiums. Further, nowhere in Louisiana's statutes does it state that a company must have a positive premiums liability to be considered "subject to" the gross premiums tax. As such, Taxpayer constitutes an insurance company "subject to" the gross premiums tax and is exempt from the state franchise tax despite the tax-exempt status of its premiums.

TAXPAYER'S CONCLUSION

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

QUESTIONS PRESENTED

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

RULING REQUESTED

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

RESPONSES TO QUESTIONS PRESENTED

1. Is Taxpayer subject to the Louisiana gross premiums tax, even though its Medicare Part D premiums are exempt pursuant to federal law? The Louisiana Department of Insurance administers the Louisiana gross premiums tax. Therefore, answering this question is outside of the scope of authority of the Louisiana Department of Revenue.
2. If Taxpayer is subject to Louisiana gross premium tax, then is Taxpayer exempt from Louisiana franchise tax? No. Merely being subject to the Louisiana gross premium tax does not exempt the taxpayer from the corporate franchise tax. La. R.S. 47:608 (10) provides an exemption from the franchise tax for insurance corporations **paying** a premium tax to Louisiana. Therefore, Taxpayer is not exempt from the Louisiana franchise tax because it is not paying the premium tax.

RULING

Because Taxpayer is not paying the Louisiana gross premium tax, Taxpayer is not exempt from Louisiana franchise tax.

If you have any questions or need additional information, please call Vanessa LaFleur, Director, Policy Services Division or Edward Landry, Policy Services Division, at 219-2780.

Sincerely,

Cynthia Bridges
Secretary

By:

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