

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-96 (29) C
Corporation Tax
December 31, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C961126A

On November 26, 1996, a Petition for Advisory Opinion was received from First Alexander Hamilton Life Insurance Co., 6225 Sheridan Drive, Williamsville, New York 14221.

The issues raised by Petitioner, First Alexander Hamilton Life Insurance Co., are:

1. Whether reinsurance premiums received by Petitioner are included within the term "premiums" as used in section 1505(b) of the Tax Law for purposes of computing whether more than 95 percent of the "premiums" received by an insurance company are received as consideration for annuity contracts.

2. If the answer to issue "1" is yes, whether it makes any difference that the reinsurance premiums are received from an insurer that is not licensed to transact business in New York.

3. If the answer to issue "1" is yes, whether it makes any difference that the reinsurance premiums are received from an affiliated insurer that is not licensed to transact business in New York.

Section 1505 of the Tax Law provides as follows:

(a) Notwithstanding the provisions of sections [1501 and 1510], the amount of taxes imposed under such sections . . . computed without regard to any credits allowable against such tax other than those credits provided under [section 1511(g) and (h)], shall not exceed an amount computed as if such taxes were determined solely under section [1510], except that for purposes of the limitation provided herein, the rate of tax under such section shall be deemed to be [2.6] percent.

(b) For purposes of the limitation set forth in subdivision (a) of this section, in the case of an insurance corporation more than [95] percent of whose premiums are received as consideration for annuity contracts or are for policies and insurance described in [section 1510(c)(2)], in determining the amount of tax computed solely under section [1510], gross direct premiums subject to tax under such section shall include all amounts received as consideration for annuity contracts and premiums for policies and insurance, including any separate costs assessed by such insurance corporation upon its policyholders, described in [section 1510(c)(2)].

Section 1510(c)(1) of the Tax Law provides, in part, as follows:

The term "premium" includes all amounts received as consideration for insurance contracts or reinsurance contracts, other than for annuity contracts, and shall include premium deposits, assessments, policy fees, membership fees, any separate costs by carriers assessed upon their policyholders and every other compensation for such contract

For purposes of the limitation set forth in section 1505(a) of the Tax Law, the amount of taxes imposed by sections 1501 and 1510 of the Tax Law, computed without regard to any credits allowable against such taxes other than those credits provided under section 1511(g) and (h), shall not exceed the amount determined as if such taxes were computed solely under section 1510 of the Tax Law with the rate of tax deemed to be 2.6 percent. Section 1505(b) of the Tax Law provides that if more than 95 percent of an insurance corporation's premiums are received as consideration for annuity contracts or are for policies and insurance described in section 1510(c)(2) of the Tax Law [i.e. group insurance for the elderly and ocean marine insurance], premiums for annuity contracts and insurance described in section 1510(c)(2) are to be included in the computation of gross direct premiums for purposes of the limitation set forth in section 1505(a). However, section 1505(b) of the Tax Law does not define the term "premiums" for purposes of the 95 percent determination.

The memorandum in support of the Laws of 1978, Chapter 480, which added section 1505(b) of the Tax Law states, in part, that:

the current statute exempts both annuity business and ocean marine insurance from the premiums tax. Consequently, companies primarily engaged in these lines of business are virtually, if not totally, exempted from the net income tax. To cure this defect the bill amends Article 33 so that for purposes of the income tax, a company with more than 95% of its business in annuity contracts or ocean marine insurance or both must include those premiums in determining the "cap" on its income tax. (emphasis added) (NY Legis Ann, 1978, p 284, 287)

The issues raised herein were addressed previously in John Alden Life Insurance Company of New York, Adv Op Comm T & F, December 18, 1995, TSB-A-95(21)C, and Royal Life Insurance Company of New York, Adv Op Comm T & F, November 1, 1994, TSB-A-94(15)C. In both John Alden and Royal Life, it was held that since the limitation contained in section 1505 of the Tax Law is based on the amount of tax that would be computed under the premiums tax imposed under section 1510, it is appropriate to use the definition contained in the first sentence of section 1510(c)(1), modified as required by section 1505(b) of the Tax Law, for purposes of computing the limitation under section 1505 of the Tax Law.

Therefore, in accordance with the memorandum in support of the Laws of 1978, Chapter 480, and section 1510 of the Tax Law and John Alden, supra, and Royal Life, supra, when determining

whether more than 95 percent of an insurance corporation's premiums are received as consideration for annuity contracts or are for policies and insurance described in section 1510(c)(2) of the Tax Law, the term "premiums" means premiums as used in the first sentence of section 1510(c)(1) of the Tax Law modified to include amounts received as consideration for annuity contracts. That is, the term "premiums" includes all amounts received as consideration for insurance contracts or reinsurance contracts, including annuity contracts, and shall include premium deposits, assessments, policy fees, membership fees, any separate costs by carriers assessed upon their policyholders and every other compensation for such contract.

Herein, with respect to issues "1", "2" and "3", for purposes of computing whether more than 95 percent of the premiums received by an insurance company are received as consideration for annuity contracts under section 1505(b) of the Tax Law, the term "premiums" has the same meaning as used in the first sentence of section 1510(c)(1) of the Tax Law modified to include amounts received as consideration for annuity contracts. Such term includes all amounts received as consideration for reinsurance contracts. This includes reinsurance premiums received from an insurer that is not licensed to transact business in New York and reinsurance premiums received from an affiliated insurer that is not licensed to transact business in New York.

It should be noted that, where an insurance company determines that more than 95 percent of its premiums are received as consideration for annuity contracts or are for policies and insurance described in section 1510(c)(2) of the Tax Law, such insurance company computes the limitation under section 1505 of the Tax Law by using the method set forth in section 1510(c) of the Tax Law for determining gross direct premiums, modified as required by section 1505(b) of the Tax Law. That is, gross direct premiums are modified by including all amounts received as consideration for annuity contracts for policies and insurance, including any separate costs assessed by such insurance corporation upon its policyholders, described in section 1510(c)(2) of the Tax Law.

DATED: December 31, 1996

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.