

February 26, 2003

IN RE: PRINCIPAL MUTUAL LIFE INSURANCE COMPANY  
DOCKET NO: 36BPMERZZ9761

STATEMENT OF RECORD:

1. Principal Mutual Life Insurance Company (hereafter "Petitioner") filed a petition for review with the Tax Review Board on August 13, 1998 for review of a Business Privilege Tax assessment for the years 1993 through 1998.
2. The facts in this matter were fully stipulated by the parties thus obviating the need for an evidentiary hearing. Briefs were filed and oral argument was presented to the Tax Review Board on May 9, 2002. Following the oral argument, the matter was taken under advisement.
3. The decision of the Tax Review Board was announced on November 14, 2002. The decision of the Board was to deny the petition.
4. Petitioner has appealed to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

The Stipulation of Facts signed by counsel for Petitioner and the City of Philadelphia (hereinafter "City") and entered into evidence before the Tax Review Board is hereby incorporated by reference.

The Petitioner is an Iowa based insurance company. Petitioner was the mortgage holder on two separate pieces of property in Philadelphia. In two separate transactions, Petitioner took title to each of these properties through foreclosure proceedings. For more than five years before selling them, Petitioner owned and operated each of these properties as if Petitioner was in the real estate business. The City of Philadelphia has assessed Business Privilege Tax on the rental income and gross receipts realized by Petitioner for this real estate business during the years 1993 through 1998 in which Petitioner owned and operated these two buildings.

The principal amount of tax the City has assessed is \$189,548. In addition, interest and penalties have been assessed by the City and are calculated through January 23, 2002 as \$126,777 and \$219,399 respectively.

CONCLUSIONS OF LAW:

The issue presented to the Tax Review Board is whether Petitioner, an Iowa insurance company, is subject to the Business Privilege Tax (BPT) on income earned and the gross receipts from the rentals received from Petitioner's real estate business comprising two buildings it owned in the City. Petitioner must demonstrate that the imposition of the BPT on the rental income and gross receipts of its real estate business derived from

Petitioner's real estate, owned within the City, would trigger a retaliatory tax on Pennsylvania insurance companies conducting insurance business in Iowa.

The BPT is assessed on "the carrying on or exercising for gain or profit within a city of the first class, any trade, business, including financial business as hereinafter defined, profession, vocation or commercial activity or making sales to persons within such city of the first class." This definition of "business" specifically "shall not include... (t)he business of any insurance company...of any other state under the laws of which insurance companies...of this Commonwealth doing business in such other state are subjected, by reason of the tax imposed by this act, to additional or further taxes, fines, penalties or license fees by such other state." The Philadelphia Code Chapter 19-2600. Therefore the BPT excludes from taxation the gross receipts and net income derived from the business of a foreign insurance company if the imposition of the BPT would trigger a retaliatory tax on Pa. insurance companies conducting business in that company's home state.

Retaliatory taxes are specifically aimed at the taxation of income generated by an insurance company's insurance activities. The retaliatory tax is meant to insure that a domestic insurance company is not granted an advantage over foreign insurance companies by a state's taxing scheme.

Title XIII, Subtitle 1, Chapter 505, Section 14 of the Iowa Code provides in part:

When by the laws of any other state a premium or income or other taxes, or fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions, or restrictions are imposed upon Iowa insurance companies actually doing business in the other state, or upon the agents of the Iowa companies, which in the aggregate are in excess of the aggregate of the taxes, fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions directly imposed upon insurance companies of the other state under the statutes of this state, the same obligations, prohibitions or restrictions of whatever kind are in the same manner and for the same purpose imposed upon insurance companies of the other state doing business in Iowa.

There do not appear to be any Iowa judicial or administrative opinions or interpretations of the Iowa statute to use as a guide. Therefore both parties were forced to utilize opinions and rulings from states other than Iowa that would be analogous to the circumstances under review in this matter.

The plain language of the Iowa statute expressly refers to a comparison of taxes and other financial obligations imposed by a foreign state with those imposed by the state of Iowa. This language raises the question of whether the Iowa statute is intended to include local obligations such as the City BPT in its calculation of the tax burden imposed on Iowa insurers doing business in other states. While Petitioner argued in its brief that municipal taxes are to be included, that is not expressly provided in the language of the statute.

The scope of these types of retaliatory tax statutes has been addressed by both the Illinois Supreme Court and the Delaware Superior Court. In Pacific Mutual Life Insurance Co. v. Gerber, 22 Ill.2d 196, 174 N.E.2d 862 (1961), the Illinois Supreme Court concluded the following:

When the entire section is read, particularly in light of the prefatory language, we think it is clear that the legislature included within its scope only the taxes paid by insurance companies, as such, as a condition precedent to their doing business in the respective States. If it were not otherwise, and if plaintiff's theory was carried to its illogical conclusions, the result would be a construction that state differences in such things as motor-vehicle fees, fuel tax and the like, required 'by other law(s) of this state, were intended to be included in the computation of the retaliatory tax.

The Illinois Court's concern about an overly broad and inclusive interpretation of the state's retaliatory tax provision that would prove administratively unwieldy and simply illogical, was a basis for its decision that personal property taxes imposed by two Illinois counties on a California insurance company, were not to be included in its retaliatory tax computation.

The Illinois Court's reasoning was adopted by the Delaware Superior Court in Continental American Life Insurance Company v. City of Wilmington, 273 A.2d 277(Del. Super. Ct. 1970) that decided that a \$200 license fee the city imposed on owners or operators of office buildings leasing 2500 or more square feet of office space did not constitute the business of insurance as meant by the retaliatory taxing statute and echoed the Illinois Court's concern about using an overly broad interpretation of the retaliatory statute.

The BPT is a local tax imposed on all businesses that choose to operate in the City. It is not limited to insurance companies nor is it required of a company choosing to operate in the Commonwealth of Pennsylvania as a whole but not specifically within the confines of Philadelphia.

In addition, the Delaware Court raised the issue that the operation of rental real estate did not constitute the business of insurance and therefore was not within the scope of the retaliatory tax statutes. This issue was also considered in Industrial Indemnity Company v. Cooper, 81N.Y.2d 50,611 N.E.2d 765 (1993) by the New York Court of Appeals which concluded that a local tax levied on all taxpayers who conducted business in rented commercial space was not subject to inclusion in the retaliatory tax calculation.

The business of owning and operating two office buildings in the City and the Petitioner collecting rents there from does not fall within the purview of the business of insurance companies that is meant to be protected by these retaliatory statutes. When Petitioner's mortgagors defaulted and Petitioner took title through foreclosure proceedings, Petitioner then chose to own these two buildings and operate them as a rental business for several years.

Petitioner, as the moving party, bears the burden of proof to establish by substantial evidence that its position is correct and the City's tax assessment is in error.

2 Pa.C.S.A §754; City of Philadelphia v. Litvin, 235 A.2d 157(Pa.Super. 1967)

Petitioner did not establish that local taxes are to be included in the calculations for the retaliatory tax nor did Petitioner establish that rental income is to be included in the definition of what constitutes the business of an insurance company for purposes of calculating Iowa's retaliatory tax.

Petitioner did not meet its burden of proof to establish that imposition of the BPT on Petitioner's real estate activities in Philadelphia would result in the imposition of the Iowa retaliatory tax on Pennsylvania insurance companies doing business in Iowa. Petitioner did not provide substantial evidence to convince the Tax Review Board that the Iowa retaliatory tax would be triggered should Philadelphia impose the BPT on Petitioner's real estate activities.

Therefore, it is the determination of the Tax Review Board that the BPT would not be included in the retaliatory tax calculation under the Iowa statute.

Petitioner is required to pay Business Privilege Tax (BPT) on the gross receipts and net income from the two properties it owned and operated in the City.

Concurred:

Daniel Saidel, Esq., Chair

Derrick Johnson, Vice Chair

Una Vee Bruce

Wade Stevens

Joseph Ferla