



FLORIDA

Executive

Director

Leon M. Biegalski

QUESTION: DOES COMPANY HAVE NEXUS WITH THE STATE OF FLORIDA AND DO THE CEDING COMPANIES HAVE A REGIONAL HOME OFFICE IN FLORIDA?

ANSWER: COMPANY DOES NOT HAVE NEXUS IN THE STATE OF FLORIDA AND THE CEDING COMPANIES DO NOT HAVE A REGIONAL HOME OFFICE IN FLORIDA, NOR ARE THE COMPANIES RESIDENT IN FLORIDA.

January 13, 2017

Re: Technical Assistance Advisement – 17C1-001
Nexus for Reinsurance Company
Sections 220.02, 220.11, Florida Statutes (“F.S.”)
Rule 12C-1.011, Florida Administrative Code (“F.A.C.”)
XXXXX

Dear XXXXX:

This is in response to your request dated July 19, 2016, for a Technical Assistance Advisement (“TAA”) pursuant to section 213.22, F.S., and Rule Chapter 12-11, F.A.C., on whether XXXXX has nexus with the State of Florida; and whether XXXXX and its affiliates (“Ceding Companies”) have a Regional Home Office (“RHO”) in Florida.

FACTS SUPPLIED BY TAXPAYER

XXXXX has no property or employees in Florida. XXXXX is not an approved reinsurer and is not registered with the Florida Office of Insurance Regulation. XXXXX reinsures some policies, including policies covering Florida risks, of its affiliates. XXXXX uses unrelated external reinsurers to set the pricing and terms of the coverage it provides for its affiliates with XXXXX assuming XXXXX.¹

XXXXX’s affiliate insurance companies, the Ceding Companies, operate in many states, including Florida. None of these ceding companies are domiciled in Florida. A majority of the work performed by the Ceding Companies is performed by personnel that are legally employed by XXXXX’s parent company, XXXXX, and/or other affiliates, although most ceding companies have their own legal employees as well. Some ceding companies have a majority of their non-management staff employees in the parent company’s Florida location.

A variety of functions are performed by the Ceding Companies at the Florida office location. These activities include: selling insurance; approval or rejection of coverage, within limitations; issuing insurance; and acting as a service center for policy holders.

¹ XXXXX.

Less than 5% of the Ceding Companies' underwriters are located in Florida, and they, like all of the other underwriters located outside Florida, may work on a Florida policy or a non-Florida policy based on the due date for completion of the underwriting activity.

The Florida office has a small budget for advertising, but national advertising, including radio, Television, and billboard advertising, is handled outside Florida.

ISSUES PRESENTED

1. Does XXXXX have nexus in Florida?
2. Do the Ceding Companies have a regional home office in the State of Florida?

LEGAL AUTHORITY

Section 220.02(1), F.S., states:

It is the intent of the Legislature in enacting this code to impose a tax upon all corporations, organizations, associations, and other artificial entities which derive from this state or from any other jurisdiction permanent and inherent attributes not inherent in or available to natural persons, such as perpetual life, transferable ownership represented by shares or certificates, and limited liability for all owners. It is intended that any limited liability company that is classified as a partnership for federal income tax purposes and is defined in and organized pursuant to chapter 605 or qualified to do business in this state as a foreign limited liability company not be subject to the tax imposed by this code. It is the intent of the Legislature to subject such corporations and other entities to taxation hereunder for the privilege of conducting business, deriving income, or existing within this state. This code is not intended to tax, and shall not be construed so as to tax, any natural person who engages in a trade, business, or profession in this state under his or her own or any fictitious name, whether individually as a proprietorship or in partnership with others, or as a member or a manager of a limited liability company classified as a partnership for federal income tax purposes; any estate of a decedent or incompetent; or any testamentary trust. However, a corporation or other taxable entity which is or which becomes partners with one or more natural persons shall not, merely by reason of being a partner, exclude from its net income subject to tax its respective share of partnership net income. This statement of intent shall be given preeminent consideration in any construction or interpretation of this code in order to avoid any conflict between this code and the mandate in s. 5, Art. VII of the State Constitution that no income tax be levied upon natural persons who are residents and citizens of this state.

Section 220.11, F.S., states in part:

(1) A tax measured by net income is hereby imposed on every taxpayer for each taxable year commencing on or after January 1, 1972, and for each taxable year which begins before and ends after January 1, 1972, for the privilege of conducting business, earning or receiving income in this state, or being a resident or citizen of this state. Such tax shall be in addition

to all other occupation, excise, privilege, and property taxes imposed by this state or by any political subdivision thereof, including any municipality or other district, jurisdiction, or authority of this state....

Section 220.151, F.S., states in part:

(1)(a) Except as provided in paragraph (b), the tax base of an insurance company for a taxable year or period shall be apportioned to this state by multiplying such base by a fraction the numerator of which is the direct premiums written for insurance upon properties and risks in this state and the denominator of which is the direct premiums written for insurance upon properties and risks everywhere. For purposes of this paragraph, the term “direct premiums written” means the total amount of direct premiums written, assessments, and annuity considerations, as reported for the taxable year or period on the annual statement filed by the company with the Office of Insurance Regulation of the Financial Services Commission in the form approved by the National Convention of Insurance Commissioners or such other form as may be prescribed in lieu thereof.

(b) If the principal source of premiums written by an insurance company consists of premiums for reinsurance accepted by it, the tax base of such company shall be apportioned to this state by multiplying such base by a fraction the numerator of which is the sum of:

1. Direct premiums written for insurance upon properties and risks in this state, plus
2. Premiums written for reinsurance, accepted in respect to properties and risks in this state, and the denominator of which is the sum of direct premiums written for insurance upon properties and risks everywhere plus premiums written for reinsurance accepted in respect to properties and risks everywhere. For purposes of this paragraph, premiums written for reinsurance accepted in respect to properties and risks in this state, whether or not otherwise determinable, shall be determined on the basis of the proportion which premiums written for reinsurance accepted from companies **resident in or having a regional home office in the state** bears to premiums written for reinsurance accepted from all sources.... (emphasis added)

Rule 12C-1.011(1), F.A.C., states in part:

(1) The following activities, notwithstanding others within the meaning of taxable privileges described in Section 220.02, F.S., will be construed as conducting business, earning or receiving income in Florida, or constitute those activities of a resident or citizen of Florida for purposes of this tax, and corporations participating therein are subject to taxation unless exempted by the constitution or the laws of the United States or of Florida....

(w) Insurers.

1. The issuing of policies of insurance or contracts of annuity under a certificate of authority issued by the Florida Department of Insurance where the policies or contracts are to be performed in Florida or where the policies insure or cover persons, property, subjects or risks located or resident in Florida.

2. The collecting of premiums on policies of insurance or contracts of annuity on such persons, property, subjects, or risks as described in subparagraph 1. above, when such policies were initially issued by an insurer possessing a certificate of authority issued by the Florida Department of Insurance.
3. The issuing of policies of insurance or contracts of annuity or the collecting of premiums without possessing a certificate of authority issued by the Florida Department of Insurance, when the issuing or collecting insurer would have been required to obtain a certificate of authority to engage in those activities.
4. The entering into contracts of reinsurance when such contracts of reinsurance are placed with an approved reinsurer by a ceding insurer domiciled or commercially domiciled in Florida as defined in Chapter 624, F.S., or by either an artificial entity domiciled or resident in Florida or a political subdivision of Florida where either the artificial entity or the political subdivision is engaged in self insurance.
5. Surplus lines insurers with an office or employees located in Florida

Section 624.07, F.S., states:

Except as provided in s. 631.011, the “domicile” of an insurer means:

- (1) As to Canadian insurers, Canada and the province under the laws of which the insurer was formed.
- (2) As to other alien insurers authorized to transact insurance in one or more states, the state designated by the insurer in writing filed with the office at the time of admission to this state or within 6 months after the effective date of this code, whichever date is the later, and may be any of the following states:
 - (a) That in which the insurer was first authorized to transact insurance if the insurer is still so authorized.
 - (b) That in which is located the insurer’s principal place of business in the United States.
 - (c) That in which is held the larger deposit of trusteed assets of the insurer for the protection of its policyholders and creditors in the United States. If the insurer makes no such designation, its domicile shall be deemed to be that state in which is located its principal place of business in the United States.
- (3) As to alien insurers not authorized to transact insurance in one or more states, the country under the laws of which the insurer was formed.
- (4) As to all other insurers, the state under the laws of which the insurer was formed.

Section 624.075, F.S., states:

Every foreign or alien insurer which is authorized to do business in this state and which, during its 3 preceding fiscal years taken together, or during any lesser period of time if it has been licensed to transact its business in this state only for the lesser period of time, has written an average of 25 percent or more direct premiums in this state than it has written in its state of domicile during the same period, and the direct premiums written constitute more than 55 percent of its total direct premiums written everywhere in the United States during

its 3 preceding fiscal years taken together, or during any lesser period of time if it has been authorized to transact its business in this state only for the lesser period of time, as reported in its most recent applicable annual or quarterly statements, shall be deemed a “commercially domiciled insurer” within this state.

Section 624.610, F.S., states in part:

(1) The purpose of this section is to protect the interests of insureds, claimants, ceding insurers, assuming insurers, and the public. It is the intent of the Legislature to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. . . .

(2) Credit for reinsurance must be allowed a ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (3)(a), paragraph (3)(b), or paragraph (3)(c). Credit must be allowed under paragraph (3)(a) or paragraph (3)(b) only for cessions of those kinds or lines of business that the assuming insurer is licensed, authorized, or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed or authorized to transact insurance or reinsurance.

(3)(a) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is authorized to transact insurance or reinsurance in this state.

(b)1. Credit must be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state. An accredited reinsurer is one that:

- a. Files with the office evidence of its submission to this state’s jurisdiction;
- b. Submits to this state’s authority to examine its books and records;
- c. Is licensed or authorized to transact insurance or reinsurance in at least one state or, in the case of a United States branch of an alien assuming insurer, is entered through, licensed, or authorized to transact insurance or reinsurance in at least one state;
- d. Files annually with the office a copy of its annual statement filed with the insurance department of its state of domicile any quarterly statements if required by its state of domicile or such quarterly statements if specifically requested by the office, and a copy of its most recent audited financial statement; and

(I) Maintains a surplus as regards policyholders in an amount not less than \$20 million and whose accreditation has not been denied by the office within 90 days after its submission; or

(II) Maintains a surplus as regards policyholders in an amount not less than \$20 million and whose accreditation has been approved by the office.

2. The office may deny or revoke an assuming insurer’s accreditation if the assuming insurer does not submit the required documentation pursuant to subparagraph 1., if the assuming insurer fails to meet all of the standards required of an accredited reinsurer, or if the assuming insurer’s accreditation would be hazardous to the policyholders of this state. In determining whether to deny or revoke accreditation, the office may consider the qualifications of the assuming insurer with respect to all the following subjects:

- a. Its financial stability;
- b. The lawfulness and quality of its investments;

- c. The competency, character, and integrity of its management;
 - d. The competency, character, and integrity of persons who own or have a controlling interest in the assuming insurer; and
 - e. Whether claims under its contracts are promptly and fairly adjusted and are promptly and fairly paid in accordance with the law and the terms of the contracts.
3. Credit must not be allowed a ceding insurer if the assuming insurer's accreditation has been revoked by the office after notice and the opportunity for a hearing.
 4. The actual costs and expenses incurred by the office to review a reinsurer's request for accreditation and subsequent reviews must be charged to and collected from the requesting reinsurer. If the reinsurer fails to pay the actual costs and expenses promptly when due, the office may refuse to accredit the reinsurer or may revoke the reinsurer's accreditation.
- (c)1. Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in paragraph (5)(b), for the payment of the valid claims of its United States ceding insurers and their assigns and successors in interest. To enable the office to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the office information substantially the same as that required to be reported on the NAIC Annual Statement form by authorized insurers. The assuming insurer shall submit to examination of its books and records by the office and bear the expense of examination. ...

DISCUSSION

Nexus

Section 220.02(1), F.S., provides the legislative intent to subject such corporations and other entities to the Florida corporate income tax for the privilege of conducting business, deriving income, or existing within Florida. Rule 12C-1.011, F.A.C., provides a listing of many activities that will be considered conducting business, deriving income, or existing within Florida. However, this listing does not include all activities or situations that would, or would not, create nexus in Florida. With regard to reinsurers, Rule 12C-1.011, F.A.C., specifically states:

The entering into contracts of reinsurance when such contracts of reinsurance are placed with an approved reinsurer by a ceding insurer domiciled or commercially domiciled in Florida as defined in Chapter 624, F.S., or by either an artificial entity domiciled or resident in Florida or a political subdivision of Florida where either the artificial entity or the political subdivision is engaged in self insurance.

An approved reinsurer is a reinsurer contemplated in section 624.610, F.S., which would allow the ceding insurer credit for the reinsurance it obtains. Section 624.610, F.S., requires, amongst other requirements, the insurer to be authorized to transact insurance or reinsurance in this state. If the insurer or reinsurer is authorized to transact business in Florida², then it would appear that a sufficient connection with Florida exists (nexus).

² The McCarran-Ferguson Act provided the states with authority to regulate the business of insurance, which would include reinsurance.

In addition, if an approved reinsurer reinsures policies from an insurer domiciled or commercially domiciled in Florida, nexus clearly exists. The terms “domicile” and “commercial domicile” are specifically defined in statute, sections 624.07 and 624.075, F.S., respectively.

In this case, XXXXX is not an approved reinsurer and is not registered with the Florida Office of Insurance Regulation. Also, the Ceding Companies are not domiciled or commercially domiciled in Florida. As a result, XXXXX does not meet the provision of the rule that would clearly indicate it has nexus with Florida. Therefore, a conclusion is reached that XXXXX does not have nexus with Florida and is not required to file a Florida corporate income tax return.

Regional Home Office

Although, the phrase “regional home office” is not specifically defined in Chapter 220 or Chapter 214, Florida Statutes, it is included in s. 220.151, F.S. (formerly s. 214.72, F.S.). Additionally, there is no definition of the term “resident in” in Chapter 220, F.S. The term “resident,” as used in Chapter 220, F.S., generally refers to individuals/employees for purposes of claiming credits or deductions (for example, ss. 220.181, 220.182, 220.185). The term “resident,” as used in the Florida Insurance Statutes, generally refers to individuals/agents.

In the absence of the definition of “regional home office”, we must look to the intent of the law and the common definitions of the terms. Historically, the Department has viewed the terms “resident” or “resident in” as the domicile, as defined in section 624.07, F.S., of the insurer. In 2010, the U.S. Supreme Court defined a corporation’s place of residence for diversity jurisdiction as the nerve center of the corporation (i.e., the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities)³.

The information provided by XXXXX indicates that all parties involved in these transactions are related.⁴ The parent company has an office in Florida, and the employees of the parent company and other related entities, as well as the employees of each ceding company, perform many of the same activities that would occur in a regional home office. These activities include: selling insurance, approval or rejection of coverage, within limitations, issuing insurance, and acting as a service center for policy holders. However, XXXXX argues that these activities are not performed entirely for three states, or two states and one or more foreign countries. In addition, XXXXX states that less than 5% of the ceding insurer’s underwriters are located in Florida.⁵ Also, although the Florida office has a small budget for advertising, all national advertising, including radio, Television, and billboard advertising, is handled outside Florida. XXXXX also asserts that the Florida office location only performs activities authorized by the home office, and as such, the Florida location cannot be a regional home office.

It is important to note that the general standards for statutory construction hold that taxing statutes are strictly construed in favor of the taxpayer and statutes that provide deductions, credits, etc., are strictly construed against the taxpayer. Extrinsic evidence should not be consulted to clarify or construe a tax

³ The Hertz Corporation v. Melinda Friend, et al, 559 U.S. 77 (2010)

⁴ It is a well-established principle of taxation that transactions between related parties are subject to a higher level of scrutiny than transactions between independent and unrelated parties.

⁵ All underwriters, whether located in Florida or outside Florida, may work on a Florida policy or a non-Florida policy. Everything is based on timing or the due date for completion of the underwriting activity.

statute couched in clear and unambiguous language; however, where doubtful or ambiguous language appears in a statute allowing for an exemption from taxation, the statute should be strictly construed against the taxpayer. E.g., *State ex rel. Wedgworth Farms, Inc. v. Thompson*, 101 So.2d 381 (Fla.1958); *St. Joe Paper Co. v. Department of Revenue*, 460 So.2d 399 (Fla. 1st DCA 1984), rev. denied, 467 So.2d 999 (Fla.1985). Where the legislative intent as evidenced by a statute or statutes is plain and unambiguous, then there is no necessity for any construction or interpretation of the statute, and a court will only give effect to the plain meaning of its terms. *Department of Revenue v. American Tel. & Tel. Co.*, 431 So.2d 1025, 1028 (Fla. 1st DCA 1983).

Based on the facts provided and using the plain meaning of the terms, none of the ceding companies have a regional home office in Florida or are resident in Florida.

CONCLUSION

Based on the facts provided, XXXXX does not have nexus in Florida. In addition, none of the Ceding Companies are resident in Florida or have a regional home office in Florida.

This response constitutes a Technical Assistance Advisement under section 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice as specified in section 213.22, F.S. Our response is based on those facts and specific situation summarized above. You are advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon this advice is based may subject future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of section 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

Sincerely,

Susan R. Coxwell
Tax Law Specialist
Technical Assistance and Dispute Resolution
(850) 717-6478

Record ID 211509