

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

In the Matter of:)	
)	
PREMERA BLUE CROSS (formerly Blue Cross)	
of Washington and Alaska))	
)	
)	Order No. R99-05
Tax Refund Claims for 1995 and 1996)	Denying Refund Claims
_____)	

Background

On July 24,1997, Premera Blue Cross (formerly Blue Cross of Washington and Alaska) (“Premera”) advised the Alaska Division of Insurance (“the division”) that it intended to seek a refund of retaliatory taxes. The division received a formal written request dated October 13, 1997, alleging a mistake in the preparation of the Premera’s 1995 and 1996 tax statement that resulted in an alleged overpayment of retaliatory fees in the total amount of \$1,183,450. Premera attributes the alleged mistake to a failure to include the assessments for the Alaska Comprehensive Health Insurance Association (“ACHIA”) and the Small Employer Health Reinsurance Association (“SEHRA”) in its retaliatory tax calculation.

Discussion

1. Payment of Taxes and Retaliatory Fees

Each year by March 1, authorized insurers in Alaska pay a tax to the director on the total direct premium income received during the preceding calendar year for the insurance of property or risks resident or located in this state after certain deductions allowed for in the statute. AS 21.09.210(b). See also 3 AAC 21.550. For hospital and medical service corporations like Premera, the tax is computed at a rate of six percent of their gross premiums less claims paid. In addition to the tax paid under AS 21.09.210, an insurer may be subject to retaliation under AS 21.09.270.¹ The underlying purpose of this statute is to achieve equal treatment of Alaska

¹ This statute provides:

If, under the laws of another state or foreign country, taxes, licenses, and other fees, in the aggregate, and fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions are or would be imposed upon Alaska insurers . . . that are in excess of the taxes, licenses, and other fees, in the aggregate, or that are in excess of the fines, penalties, deposit requirements, or other obligations, prohibitions, or restrictions directly imposed upon similar insurers . . . of another state or country under the statutes of this state, as long as the laws of the other state or country continue in force or are applied, the same taxes, license, and other fees, in the aggregate, or fines, penalties, or deposit

insurance companies entering a foreign jurisdiction that imposes higher taxes, licenses, and fees or imposes other obligations than those imposed on insurers doing business in Alaska. In effect, the statute levels the playing field when the insurer's domiciliary state would impose higher taxes and fees on an Alaskan insurer writing a comparable volume of business in that state. With respect to the aggregated taxes, licenses, and fees, the retaliation determination is made in conjunction with the tax computation and payment under AS 21.09.210(b).

In meeting the requirements of AS 21.09.210(b) and AS 21.09.270, each insurer completes a two part form prepared by the division of insurance for the particular class of insurer. This form is titled "Premium Tax Statement and Continuation of Certificate of Authority" and includes a "Retaliatory Schedule." The tax statement and schedule are accompanied by written instructions, all of which the division mails to authorized insurers at the beginning of every year. The tax statement requires insurers to compute the premium tax required by AS 21.09.210(b) and determine the total taxes and fees payable to the State of Alaska based on the total of premium tax, certificate of authority continuation fee, annual statement filing fee, and retaliatory fee. The retaliatory fee is derived from the retaliatory schedule. This schedule requires the insurer to report the taxes and fees that would be imposed by the insurer's domiciliary state on an Alaska insurer doing business in that state based on the same volume of business that the insurer wrote in Alaska and compare those taxes and fees with the taxes and fees it is obligated to pay in Alaska. If the total taxes and fees imposed by the state of domicile exceeds the total taxes and fees imposed by Alaska, then the tax statement requires the insurer to report the difference as a retaliatory fee on its tax statement and pay the total amount of the taxes and fees reported on the tax statement. In effect, this computation substitutes the tax and fee structure of the domiciliary state in place of Alaska's tax and fee structure.

For the tax years 1995 and 1996, Premera completed the above tax statement and retaliatory forms pertaining to hospital and medical service corporations. Premera's state of domicile is Washington, which taxes health care service contractors or hospital and medical service corporations at 2.0 percent of gross premiums. The State of Washington also imposes a Business & Occupation tax on dental insurance premiums minus paid claims at a rate of 2.09 percent. Accordingly, to compute the tax imposed by its State of Domicile, Premera reported the gross premiums for Alaska times the Washington tax rates.² In 1995, this computation resulted in aggregated tax and fees under Washington law that exceeded the aggregated taxes and fees imposed by Alaska. Premera reported the excess, \$890,478, on the retaliatory fee line of its 1995 tax statement and paid the amount without a formal protest. In 1996, this computation also resulted in aggregated tax and fees that exceeded the aggregated taxes and fees imposed by Alaska. Premera reported that excess, \$644,423, as the retaliatory fee on its 1996 tax statement and paid the amount without formal protest.

requirements or other material obligations, prohibitions, or restrictions of whatever kinds shall be imposed by the director upon the insurers . . . of the other state or country doing business or seeking to business in this state. (Emphasis added).

² Premera's gross premiums for purposes of computing its premium tax and retaliatory fees do not include premiums attributed to federal employee health plans or to University of Alaska at Anchorage health plans. The inclusion or exclusion of these premiums is not at issue in this matter.

Premera now seeks a refund of the 1995 and 1996 retaliatory fees it paid, less amounts that should have been included on the retaliatory schedule, but were not. In submitting its claim for refund, Premera determined that it also should include Washington's regulatory fee that funds Washington's Department of Insurance in the aggregate calculation on the 1995 and 1996 retaliatory schedules.³ The amounts that should have been reported on those schedules were \$85,977 in 1995 and \$90,109 in 1996.⁴ But Premera claims that it also should have included the assessments it paid to the ACHIA and SEHRA on the Alaska side of its retaliatory schedules for those years. According to Premera, inclusion of these amounts on the schedules would have reduced its retaliatory fees to \$351,451 in 1995 and zero in 1996, even after addition of Washington's regulatory fee in these computations. Premera also claims that similar assessments that would have been paid by an Alaska insurer doing business in Washington, namely the Washington State Health Insurance Pool, should not be included in the retaliatory fee computation, because of the exception in AS 21.09.270(b).⁵

2. ACHIA and SEHRA statutory overview

ACHIA is a nonprofit incorporated association created under AS 21.55.010. Its membership includes all licensed hospital or medical service corporations in the state that offer subscriber contracts for major medical coverage and all other insurers licensed to transact health insurance in this state. Membership is a condition of doing health insurance business, or being able to offer subscriber contracts in this state. The association is run by a board of directors of five individuals selected by participating members, subject to the director's approval. AS 21.55.020. Among other things, the association may exercise the powers granted by insurers under the laws of Alaska and may establish administrative and accounting procedures for operating the association. AS 21.55.020. The plan of operation is approved by the director under AS 21.55.040. The association was formed to make available to residents who are high risks or federally defined eligible individuals an individual state plan of health insurance upon payment of the required premium. AS 21.55.100. In addition to charging premium, the state plans may require deductibles or copayments. AS 21.55.120. Like insurers, the association may not charge a rate for coverage issued by the association that is excessive, inadequate, or unfairly discriminatory. AS 21.55.150. Under statute, each member of the association shares in the losses due to claim expenses of the state plans and in the operating and administrative expenses of the association. AS 21.55.220. To the extent that claim expenses of the state plan exceed the premium payments allocated to the payment of benefits, that excess becomes a liability of the members. Each member shares in the expenses or liability, through assessments imposed by the association, in an amount equal to the ratio of the member's total fees for subscriber contracts or total health insurance premiums received from or on behalf of state residents to the total subscriber fees and health insurance premiums received by all

³ This fee is assessed under RCW 48.02.190 and covers the annual cost of operating the office of the insurance commissioner.

⁴ If those fees had been included on Premera's schedules at the time, the retaliatory fees would have increased to \$976,455 in 1995 and \$734,532 in 1996.

⁵ The pertinent part of this exception as it read in 1995 and 1996 states:

This section does not apply to . . . special purpose obligations or assessments imposed by another state in connection with particular kinds of insurance other than property insurance; . . .

association members from or on behalf of state residents. AS 21.55.220(c). Insurers must pay the assessments to the association within 30 days of receipt of the assessment notice. Failure to pay the assessment within 30 days is grounds to revoke the member's certificate of authority. AS 21.55.220(d). Net gains, if any, from the operation of the state plans must be held at interest and used by the association to offset future losses due to claims expense of a state plan or allocated to reduce state plan premiums. AS 21.55.220(e). The state is not liable for payment of a claim under a state plan. AS 21.55.410.

SEHRA also is a nonprofit incorporated association that was created by statute. AS 21.56.010. Its membership includes all health care insurers, which is defined to include hospital or medical service corporations licensed under AS 21.87. Membership is a condition of transacting health insurance business in this state. The association is operated by a board of directors of nine individuals selected by participating members, subject to the director's approval. Among other things, the association may exercise all the powers granted to insurers in this state, except that it may not issue insurance, but it may establish administrative and accounting procedures and may assess members as necessary to cover operating expenses. AS 21.56.030. The purpose of the association is to provide reinsurance to health care insurers who have provided health care coverage to small employers. For this reinsurance, the insurer of a small employer pays premium to the association in an amount determined by the association under the requirements of AS 21.56.050 and subject to the approval of the director. The small employer pays a premium to the insurer, which is set by the insurer subject to the restrictions in AS 21.56.120. The association's net loss, if any, for a given year must be recovered by collecting assessments from reinsuring insurers. AS 21.56.050. This assessment formula is based on each reinsuring insurer's share of the total premiums earned in the preceding calendar year from new and existing health care insurance issued to small employers in this state. AS 21.56.050(d). If assessments exceed net losses of the association, the excess must be held in an interest bearing account and used by the board to offset future losses or to reduce reinsurance association premiums. AS 21.56.050(d)(6).

3. Treatment of ACHIA and SEHRA assessments under AS 21.09.270

In light of the statutes creating ACHIA and SEHRA, I conclude that the ACHIA and SEHRA assessments should not be included in the aggregate calculation of taxes, licenses, and fees. These assessments are calculated, imposed, collected, and administered by non profit associations created by statute, which are legal entities separate from the state. The assessments are not deposited in the state treasury or the general fund. Therefore, they do not represent state or public revenues and do not in any way impact the state treasury. Accordingly, the assessments cannot reasonably be treated the same as taxes, licenses, and fees for purposes of the aggregate calculation under AS 21.09.270(a). This conclusion is consistent with the division's historical position not to include assessments imposed under Alaska statute on insurers, such as the ACHIA and SEHRA assessments, in the aggregate calculation of taxes, licenses, and fees. Under the statute, these assessments are more appropriately treated as "other obligations" or "other material obligations," which is how Premera has characterized them in its refund request. Like fines, penalties, deposits, and other prohibitions and restrictions, these assessments would not be included in the aggregate calculation of taxes, licenses, and fees, but should be compared on an item for item basis with "other material

obligations” imposed by another state. The assessments of the Washington Health Insurance Pool is an assessment or obligation similar to ACHIA.⁶ The exception in subsection (b), however, states that the retaliation statute does not apply to “special purpose obligation or assessment” imposed by another state in connection with insurance other than property insurance. To the extent that the Washington assessment is a “special purpose obligations or assessments,” there is no requirement for further retaliation in this case. This result is reached either because there are no assessments to compare against ACHIA and SEHRA by operation of the exception, or because ACHIA and SEHRA assessments exceed the comparable assessments in Washington, (which would be zero by operation of the exception). Because the ACHIA and SEHRA assessments are not a tax, license, or fee, however, the exception does not operate to reduce the retaliatory fees reported on Premera’s 1995 and 1996 tax statements.

In its refund request, Premera has cited two Florida First District Court of Appeal cases and a Minnesota tax court case in support of its position that the ACHIA and SEHRA assessments as “other material obligations” should be included in the aggregate calculation of taxes, licenses, and fees. These cases, however, are not controlling in Alaska and, in any event, do not demonstrate that the division’s interpretation and application of the statute is unreasonable.

Findings of Fact

The Director incorporates by reference as a part of this Order the Stipulation of Facts entered into by the Division and Premera through their respective counsel. The Stipulation of Facts with attached exhibits will be appended to this Order and, thus, becomes part of the administrative record.

Conclusions of Law:

1. AS 21.09.270(a) requires a comparison of an aggregate calculation of taxes, licenses, and fees imposed by a foreign insurer’s domiciliary state on an Alaska insurer doing business in that state with an aggregate calculation of taxes, licenses, and fees imposed by Alaska on the foreign insurer doing business in Alaska to determine if that insurer is subject to retaliation under the statute. If the aggregate calculation for the foreign insurer’s domiciliary state exceeds the aggregate calculation for Alaska, then the statute requires the director to impose on the foreign insurer the aggregated taxes, licenses, and fees of its domiciliary state.
2. The division’s Retaliatory Schedule form that Premera completed in conjunction with the Premium Tax Statement and Continuation of Certificate of Authority form implements this aggregate calculation of taxes, license, and fees under AS 21.09.270.
3. ACHIA and SEHRA assessments are not a tax, license, or fee and, therefore, should not be included in the aggregate calculation of taxes, licenses, and fees. Premera’s request to include these assessments in the aggregate calculation is an unreasonable interpretation of the statute.

⁶ Like ACHIA, the Washington Health Pool was created by statute, RCW 48.41.040, and assesses members to cover claim and administrative expenses of the pool, RCW 48.41.090.

4. To the extent that the ACHIA and SEHRA assessments are “other material obligations,” under the statute, they are compared separately with like items imposed by a foreign insurer’s domiciliary state. The assessment of the Washington Health Insurance Pool is a similar assessment or obligation to ACHIA.

5. To the extent that the assessments of ACHIA, SEHRA, and the Washington Health Insurance Pool are “special purpose obligations or assessments,” the exception in AS 21.09.270(b) operates only to exclude the Washington assessment from any comparison with similar assessments imposed in Alaska to determine if retaliation is required. In Premera’s case, the exception results in no further retaliation under AS 21.09.270 for these kinds of assessments.

6. The exception in AS 21.09.270(b) also does not apply in this case to reduce Premera’s retaliation fees that arise out of the aggregate calculation of taxes, licenses, and fees since none of the aggregated taxes, licenses, and fees listed on the Retaliatory Schedule include “special purpose obligations” imposed by another state.

THEREFORE, IT IS HEREBY ORDERED:

Premera’s refund request for tax years 1995 and 1996 is denied. Premera also is ordered to pay the additional retaliatory fees of \$85,977 and \$90,109 for 1995 and 1996, respectively, based on the Washington Regulatory Fee that Premera agrees should be included on its 1995 and 1996 retaliatory schedules. This order is a final decision and order in this matter for purposes of appeal under AS 21.06.230. Any appeal must be taken within 30 days from the date this order is mailed or otherwise distributed to Premera.

This order is effective June 30, 1999.

Dated: June 30, 1999

A handwritten signature in cursive script, appearing to read "Marianne K. Burke", is written over a solid horizontal line.

Marianne K. Burke
Director