



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsley
Superintendent

Insurance Circular Letter No. 5 (2012)
July 3, 2012

TO: All Authorized Insurers Writing Business in New York State

RE: Revised Method for Collecting and Paying Premium Taxes on Insurance Policies Containing Deductibles

STATUTORY REFERENCES: Insurance Law § 3443; Tax Law § 1510(c)(1).

I. Summary

This Circular Letter provides revised guidance on the payment of premium tax in connection with policies containing deductibles.¹ As explained more fully below, any amounts received by an insurer from an insured in payment of a deductible reimbursement should not be characterized as premium for purposes of determining the insurer's premium tax liability, subject to certain conditions noted below. This conclusion represents a departure from the prior position of the Department of Financial Services (the "Department"), and is being issued in concurrence with the guidance of the Department of Taxation and Finance (the "Tax Department") on this topic set forth in TSB-M-12(6)C. This Circular Letter thus supersedes and replaces Insurance Circular Letter No. 10 (2001), which is hereby withdrawn.

II. Discussion

Insurance Law § 3443 allows the issuance of workers' compensation and employers' liability insurance policies featuring optional deductibles ("large deductible policies"). Under a large deductible policy, the insurer pays compensable claims from the first dollar, and is then reimbursed by the covered employer for the amount of the deductible. The Department traditionally viewed these reimbursement payments by covered employers ("deductible reimbursements") as constituting premium for purposes of determining the insurer's tax liability under Tax Law § 1510(c).

This view was challenged by several insurers. An Administrative Law Judge ruling on a controversy before the Division of Tax Appeals² agreed with the insurers' position that deductible reimbursements should not be viewed as constituting premium for purposes of

¹ While this issue is of particular relevance in the context of workers' compensation and employers' liability policies that feature large deductibles, the treatment of deductibles for the purpose of determining premium tax liability should be the same for all policies of insurance.

² *Matter of American Zurich Insurance Company et al.*, DTA No. 882840 (October 14, 2010).

determining an insurer's premium tax liability under Tax Law § 1510(c). The Administrative Law Judge's decision (the "decision") has no precedential authority and applies only to those insurers that were parties to the controversy ruled upon. However, the Tax Department did not elect to seek review by the Tax Appeals Tribunal of the decision, and has determined that as a matter of policy it will give effect to the decision prospectively and for periods for which the statute of limitations is open, provided that the following conditions are met:

- (1) The deductible reimbursement amounts must be received or accrued by the insurer from or on behalf of an insured policyholder pursuant to a contract of insurance containing a deductible provision and obligating the policyholder to repay the insurance corporation for payments made by the corporation that include some or all of the deductible amount; and
- (2) The insurer must not have included a cost (or factor) to cover premium tax as regards deductible reimbursement amounts in developing and calculating the amount of the premium charged to the insured policyholder, and the deductible reimbursement amounts cannot be treated for statutory accounting purposes as premium.

The Department concurs with the Tax Department's position on this matter. Accordingly, on a prospective basis, the Department will not consider deductible reimbursements paid to insurers by policyholders as premium paid for purposes of determining premium tax or any premium-based assessments under the Insurance Law where the conditions set forth above apply. In this connection, the Department will approve otherwise acceptable forms and rates that reflect these changes so as to conform to this updated guidance.

III. Conclusion

Except for those instances where the insurer's large deductible policy includes the cost of premium tax attributed to deductible reimbursement amounts paid, the Department will, on a prospective basis, no longer treat deductible reimbursements as premium paid for purposes of determining premium tax liability or any premium-based assessments under the Insurance Law, Workers' Compensation Law or Financial Services Law.

Please direct any comments or inquiries regarding this Circular Letter to Mark Daigneault at (518) 474-8567 or billing@dfs.ny.gov.

Very truly yours,

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