

CALIFORNIA STATE BOARD OF EQUALIZATION

SUMMARY DECISION UNDER REVENUE AND TAXATION CODE SECTION 40

3	In the Matter of the Claim for Refund)	
4	Under the Insurance Tax Law of:)	
5	California Insurance Company)	Account Number IT STF 34-002366
6)	Case ID 730385
7	Claimant)	

8 Type of Business: Group insurance provider

9 Claim period: 01/01/04 – 12/31/05

10 Claim amount: \$962,453.80

11 PROCEDURAL BACKGROUND

12 This claim for refund came before the Board on the nonappearance adjudicatory calendar at its
13 September 10, 2013, meeting. At this meeting, with the State Deputy Controller not participating in
14 accordance with Government Code section 7.9, the Board unanimously approved the denial of the
15 claim for refund as recommended by staff. ¹

16 LEGAL ISSUE

17 Whether the insurance transactions at issue are subject to California’s Tax on Insurers.

18 FINDINGS OF FACT AND RELATED CONTENTIONS

19 Claimant is a property and casualty insurance company that maintains an office in California.
20 The subject transactions are group insurance policies claimant wrote in 2004 and 2005 for insurance of
21 California employees through group accident and health (disability) insurance plans it issued to
22 “employer-policyholders” located in Idaho. In 2005, claimant also covered California employers

24 ¹ Previously, this same disputed issue was considered at a Board hearing held on June 27, 2012, in which the Board voted
25 4-0, with the Deputy State Controller not participating in accordance with Government Code section 7.9, to deny a petition
26 for redetermination. Claimant-petitioner then filed a timely petition for rehearing. At its December 18, 2012, meeting, the
27 State Controller not participating, the Board concluded it correctly decided this matter and that claimant-petitioner had not
28 presented a basis for a rehearing. Therefore, on January 7, 2013, a Notice of Redetermination was issued based on the
Board’s denial of claimant-petitioner’s petition for rehearing. Claimant then remitted payment and filed a timely claim for
refund in the amount of \$962,453.80 (\$603,385.00 tax plus \$359,068.80 interest) for calendar years 2004 and 2005. No
new or additional issues were presented in the claim for refund. Because the Board has already considered the issues in this
case and no additional contentions were presented in the claim for refund, this matter came before the Board as a
nonappearance matter.

1 through employment practices liability insurance. All insureds covered under the group policies were
2 located in California, and, therefore, all the risk was located in California. Claimant sent certificates of
3 insurance to the California insureds to confirm coverage. The California insureds were responsible to
4 pay the premiums and did so through the Idaho policyholders. Claimant reported the full measure of
5 the premiums on National Association of Insurance Commissioners forms and paid the premium taxes
6 on the subject transactions to Idaho, not California, because Idaho is the “situs” of the group insurance
7 policies and the Idaho employer-policyholders.

8 The California Department of Insurance (DOI) determined that claimant owed the premium
9 taxes at issue to California. DOI’s determination primarily relied on a risk allocation methodology to
10 allocate the premiums in the Idaho-California transactions; it did not rely on the location of the policies
11 or policyholders. DOI asserted that Idaho law did not require claimant to report and pay tax to Idaho
12 and that Idaho’s law is consistent with California’s analysis.

13 Claimant contends that the location of the policy and employer-policyholder governs where the
14 taxes are owed, not the location of the certificate holders (members) or the location of risk. According
15 to claimant, it did not transact business in California, and its only act in California related to the
16 policies was its issuance of certificates of insurance to the California insureds to confirm coverage.
17 Claimant asserts that those certificates were not part of the policies, but were merely evidence of
18 insurance. Claimant argues that to conclude it owes gross premium taxes to California when its only
19 act (transaction) in California was to issue certificates of insurance would violate its federal due
20 process rights. Further, claimant contends that, if Idaho and California are in conflict such that both
21 states require payment, it is inequitable to require claimant to now pay premium taxes to California for
22 the years 2004 and 2005, after it has already paid them to Idaho. Thus, claimant argues that it should
23 receive a credit against the California tax for the amount of tax it paid to Idaho. As part of the equity
24 analysis, claimant states that: (1) it is now paying these types of premium taxes to California, thus
25 risking an Idaho tax action, (2) it paid more taxes to Idaho during the audit period than it would have
26 had to pay to California, and (3) it cannot get a refund from Idaho for 2004 and 2005 because Idaho
27 has a one-year statute of limitations on taxpayer refund requests.
28

1 APPLICABLE LAW

2 The California Constitution and the California Tax on Insurers Law impose an annual tax,
3 based upon adjusted gross premiums, on insurers doing business in California. (Cal. Const., art. XIII,
4 § 28, subd. (b); Rev. & Tax. Code, § 12201.) California’s annual tax on insurers is an excise or
5 privilege tax for doing business in California, not a property tax. (See *Carpenter v. Peoples Mutual*
6 *Life Insurance Co.* (1937) 10 Cal.2d 299, 301-303.) “In the case of an insurer not transacting title
7 insurance in this State, the basis of the tax is, in respect to each year, the amount of gross premiums,
8 less return premiums, received in such year by such insurer upon its *business done in this State.*”
9 (Rev. & Tax. Code, § 12221 [emphasis added].)

10 Accordingly, the resolution of this appeal turns upon whether claimant did business in this state
11 when it issued the policies at issue for 2004 and 2005. Neither California’s Constitution nor its statutes
12 define “business done in this State.” However, case law and other authorities describe the types of
13 activities that generally qualify as business done in a state. Courts have looked to the sum total of the
14 services furnished by the insurance company to the state’s residents holding the insurance policies to
15 determine whether the premiums received were for “business done” in the state. (See *Occidental Life*
16 *Insurance Co. v. State Bd. of Equalization* (1956) 139 Cal.App.2d 468, 472.) An insurer’s
17 employment of agents within this state to perform administrative functions related to insurance policies
18 it had issued to this state’s residents is sufficient to justify a conclusion the insurer is doing business in
19 this state. (See *Illinois Commercial Men’s Assn. v. State Board of Equalization* (1983) 34 Cal.3d 839,
20 852.) With respect to an employer-provided insurance plan, courts have found that the insurer is doing
21 business in the state where the employees insured by that plan are located, even if the employer who is
22 the nominal policyholder is located in a different state. (See *Metropolitan Life Ins. Co. v. State Bd. of*
23 *Equalization* (1982) 32 Cal.3d 649, 654-662.)

24 ANALYSIS & DISPOSITION

25 Here, all of the insureds under the subject policies resided in California, and thus there can be
26 no question that California had a strong interest in protecting these residents. We give great weight to
27 this factor, and we note that Idaho law likewise assesses a premium tax based upon the location of the
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1 risk (see Idaho Code, § 41-402, subd. (1)(b)); since none of the subject insureds in this case resided in
2 Idaho, the premiums paid for insuring them were not subject to Idaho's tax.

3 In addition, with regard to the disability insurance plans, the insureds paid the premiums via
4 deductions from their paychecks and the policies specified that claimant's premiums were fully earned
5 when deducted from the insureds' paychecks. Thus, while claimant may have actually received the
6 premiums in Idaho (from the Idaho employer-policyholders that processed the payrolls for their
7 employer-clients), the California employees were responsible for paying those premiums and in fact
8 paid them, which is another of the factors that constitutes doing business in this state. (See
9 *Metropolitan Life Ins. Co. v. State Bd. of Equalization*, *supra*, 32 Cal.3d at pp. 654, 661-662.) Thus,
10 we find that the evidence demonstrates that claimant engaged in consistent activities in this state with
11 regard to the subject insurance policies and that such activities support a conclusion that claimant was
12 doing business in this state.

13 Next, it is undisputed that during 2004 and 2005 claimant maintained an administrative office
14 in this state from which to administer the disability policies. Specifically, the Notice of Claim
15 instructions under the Coverage Provisions for the subject policies instructs that "[n]otice can be given
16 to us at our home office at San Francisco, California or to our agent." Claimant's maintenance of an
17 office in this state in the course of performing its duties under the policies constitutes "doing business"
18 in this state. (See *Illinois Commercial Men's Assn. v. State Board of Equalization*, *supra*, 34 Cal.3d
19 839, 852.)

20 We acknowledge that claimant is headquartered in Nebraska, issued the policies in Idaho and
21 may have physically received premiums in Idaho from the Idaho employers, which is a factor
22 consistent with doing business in Idaho; however, as discussed above, claimant was also doing
23 business in California, and the relative weight we give those factors compels a conclusion that, for
24 purposes of the policies at issue, claimant was doing business in California. Accordingly, we conclude
25 that claimant was doing business in this state, rendering its premiums subject to California's gross
26 premiums tax.

27 With regard to claimant's alternative argument that it should be given credit for the premiums
28 tax it paid to Idaho, we note that, but for the expiration of Idaho's one-year statute of limitations (Idaho

1 Code, § 41-402A), claimant could have claimed a refund of the tax paid to Idaho on these policies for
2 2004 and 2005. In any event, there is no California authority that allows us to grant claimant an
3 allowance or credit against the tax liability owed to California based on claimant's erroneous payment
4 of the tax to Idaho.

5 Finally, as for claimant's federal constitutional (due process) argument, it is undisputed that
6 claimant maintained an office (i.e., physical presence) in this state, thereby availing itself of the benefit
7 of California's laws and protections. Consequently, we find that, contrary to claimant's assertion
8 otherwise, assessing the tax at issue here does not conflict with federal constitutional principles
9 because claimant sought the benefits and protections of California law for the subject group accident
10 and health insurance policies, rendering California's assessment of the premium tax consistent with
11 federal due process principles. (See *Quill Corp. v. North Dakota* (1992) 504 U.S. 298, 308-311; see
12 also *Illinois Commercial Men's Assn. v State Board of Equalization, supra*, 34 Cal.3d at p. 850
13 [holding that out-of-state insurer's independent investigation agents, using offices in California to
14 investigate California insured's insurance claims, enjoyed "the protection and benefit" of California
15 laws].)

16 ORDER

17 It is hereby ordered that the claim for refund be denied.

18 Adopted at Sacramento, California, on December 17, 2013.*

19
20 Jerome E. Horton _____, Chairman

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22 Michelle Steel _____, Member

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24 Betty T. Yee _____, Member

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26 George Runner _____, Member

27 *The State Controller's Deputy, Marcy Jo Mandel, did not participate in this matter in accordance with
28 Government Code section 7.9.