STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
FIRST UNUM LIFE INSURANCE COMPANY	:	DECISION DTA NO. 813883
for Redetermination of a Deficiency or for Refund of Insurance Corporation Franchise Tax under Article 33 of the Tax Law for the Period January 1, 1989 through December 31, 1991.	:	

The Division of Taxation filed an exception to the determination of the Administrative Law Judge issued on January 30, 1997 with respect to the petition of First Unum Life Insurance Company, 120 White Plains Road, Tarrytown, New York 10591-5522. Petitioner appeared by LeBoeuf, Lamb, Greene & MacRae, L.L.P. (Hugh T. McCormick, Esq., of counsel) and Paul Standish, Esq. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Paul Lefebvre, Esq., of counsel).

The Division of Taxation filed a brief in support of its exception and a reply brief. Petitioner filed a brief in opposition. Oral argument, at the Division of Taxation's request, was heard on December 11, 1997 in New York, New York.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether petitioner may compute the additional tax on premiums imposed under section 1510 of the Tax Law using the tax rates appropriate for life insurance corporations as provided

for in Tax Law § 1510(b) or, instead, is required to use the tax rate for all other insurance corporations as provided for in Tax Law § 1510(a).

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

The Division of Taxation ("Division") issued to petitioner, First Unum Life Insurance Company, a Notice of Deficiency, dated August 30, 1993, asserting a deficiency of insurance corporation franchise tax in the amount of $197,924.00 for the period January 1, 1989 through December 31, 1991.

The method by which the tax deficiency asserted in this Notice of Deficiency was computed is set forth in a Statement of Proposed Audit Adjustment dated July 19, 1993. None of the audit adjustments described in that statement were challenged by petitioner, either in its request for conference or its petition to the Division of Tax Appeals. Consequently, those adjustments need not be considered here.

For each of the years in issue, petitioner filed a form CT-33, Franchise Tax Return for Insurance Corporations. On these returns, petitioner computed its premiums and reported them as follows:

Year	Life Insur.	Accident & Health Insur.	Total
1989	$ 9,894,792.00	$120,501,323.00	$130,396,115.00
1990[1]	14,004,209.00	122,733,411.00	136,737,620.00
1991	15,634,608.00	117,809,192.00	133,443,800.00

For the years 1989, 1990 and 1991, petitioner reported its income on a Federal form 1120-PC, "U.S. Property and Casualty Insurance Company Income Tax Return." For each year, petitioner attached a copy of its Federal income tax return to its corresponding state return.

On or about September 3, 1993, the Division issued a notice to petitioner asserting a greater deficiency of franchise tax and metropolitan transportation business tax surcharge (MTBS). The amount of the additional deficiencies computed for each year is as follows:

Year	Tax Asserted	Amount
1989	franchise tax	$ 268,610.00
1989	MTBS	29,126.00
1990	franchise tax	244,471.00
1990	MTBS	22,731.00
1991	franchise tax	341,243.00

Petitioner is challenging only one aspect of the Division's recalculation of tax due. Section 1510 of the Tax Law imposes an additional franchise tax on premiums. The tax rate applied to premiums is lower for life insurance corporations than it is for other insurance corporations. In computing the tax on premiums, petitioner applied the life insurance corporation tax rate of 0.8%, as provided for in Tax Law § 1510(b). The Division determined that petitioner is not a life insurance corporation and applied the tax rates appropriate for

[1]These figures are from an amended 1990 franchise tax return. Petitioner's original return reported $13,579,409.00 for life insurance premiums and $116,840,403.00 for accident and health insurance premiums yielding a total of $130,419,812.00.

insurance corporations other than life insurance corporations, 1% on premiums from accident and health insurance policies and 1.2% on all other premiums (Tax Law § 1510[a]), which in this case included premiums from life insurance. In its letter to petitioner of September 3, 1993, the Division explained the basis for its conclusion that petitioner is not a life insurance corporation under the statute.

> Article 33, Section 1510 imposes a tax on all insurance companies for the privilege of doing business in New York State on all direct gross premiums, less return premiums, written on risks located or resident in New York.
>
> By filing an 1120PC for federal purposes, you are allowed the adjustments to unearned premiums and unpaid losses based on the fact that most of your premiums are accident and health premiums.
>
> However, for New York State purposes, since over 50% of your premiums are due to accident and health policies, tax is computed at the rate of 1% and your life insurance premiums are considered "other premiums" and taxable at 1.2%.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge noted that Tax Law former § 187 imposed a franchise tax on insurance corporations calculated on the basis of premiums written on risks located or resident in New York. She also noted that the Court of Appeals, in ***Guardian Life Ins. Co. of Am. v. Chapman*** (302 NY 226), held that provisions of the Tax Law which deal with the taxation of insurance companies and provisions of the Insurance Law dealing with the same general subject matter are *in pari materia* and "must be read together and applied harmoniously and consistently" (***Guardian Life Ins. Co. of Am. v. Chapman***, ***supra***, at 231).

In 1974, Article 33 of the Tax Law was enacted to replace section 187. However, Tax Law § 1510 retained the distinction between life insurance corporations and other insurance

corporations that existed in former section 187. Thus, the Administrative Law Judge concluded that the terms "life insurance corporation" and "transacting the business of life insurance" used in Tax Law § 1510 must be read *in pari materia* with the Insurance Law.

The Administrative Law Judge noted that the Insurance Law prohibits anyone from conducting an insurance business in New York unless they are licensed to do so. Petitioner is licensed to conduct the business of life insurance, annuities and accident and health insurance. Noting the statutory distinctions between a life insurance company and an accident and health insurance company, the Administrative Law Judge concluded that petitioner was not an accident and health insurance corporation.

The Administrative Law Judge concluded that petitioner was also not a property/casualty insurance corporation because it was not authorized to write the basic kinds of insurance appropriate to such an entity. While a property/casualty insurance company and a life insurance company may both be licensed to write accident and health insurance, only a life insurance company is authorized to do a life insurance business. Thus, the Administrative Law Judge concluded that petitioner was a "life insurance company" under the Insurance Law and that petitioner accurately calculated its additional franchise tax on its premiums pursuant to Tax Law § 1510(b) rather than pursuant to Tax Law § 1510(a).

The Administrative Law Judge rejected the Division's argument that, based on the holding in ***McAllister Bros.. v. Bates*** (272 App Div 511, 72 NYS2d 532, ***lv denied*** 272 App Div 979, 73 NYS2d 485), petitioner was to be classified for franchise tax purposes by the nature of its business rather than the purposes for which it was organized. The Administrative Law Judge found that the rules generally applicable to construing franchise tax statutes are not necessarily

applicable to Tax Law § 1510, which has its roots in Tax Law former § 187 and has no equivalence in other franchise tax provisions. Rather, the Administrative Law Judge concluded that the business activities of insurance corporations are more restricted than those of general business corporations and the additional franchise tax on premiums is unique to insurance corporations and the nature of the insurance business.

Further, the Administrative Law Judge rejected the Division's argument that since petitioner files Federal income tax returns as a property and casualty insurance corporation for Federal purposes, it cannot be a life insurance corporation under Tax Law § 1510. The Administrative Law Judge found no requirement that Tax Law § 1510 must be read consistently with the provisions of the Internal Revenue Code applicable to insurance corporations since Tax Law § 1510 does not refer either to Federal law or to the concept of an insurance corporation's reserves (as provided pursuant to Internal Revenue Code § 816 in defining a life insurance company) in order to determine its tax rate.

ARGUMENTS ON EXCEPTION

On exception, the Division agrees with the facts found by the Administrative Law Judge and requests additional findings of fact indicating that on its Form CT-33 for the years at issue, petitioner made property and casualty company addition and subtraction modifications in computing its entire net income. The Division argues that the Administrative Law Judge erred in her conclusion that petitioner is a life insurance corporation for purposes of Tax Law § 1510 and erred in her reliance on the Insurance Law in order to classify petitioner as such. The Division argues that petitioner was required to compute its Tax Law § 1510 additional tax on premiums as a non-life insurance company.

The Division argues that since petitioner is challenging the interpretation of a statute by the agency which administers it, petitioner bears the burden of proving that the Division's interpretation is irrational or unreasonable and that petitioner's interpretation is the only logical interpretation. Pursuant to Internal Revenue Code § 816, petitioner filed its Federal income tax returns as a property and casualty insurance company for the years in issue. In the Division's view, this fact alone precludes petitioner from claiming that it is a life insurance corporation under Tax Law § 1510. The Division argues that petitioner cannot be one type of insurance company for purposes of calculating its entire net income pursuant to Tax Law § 1503 and another type of company for purposes of Tax Law § 1510 additional tax on premiums. The Division argues that Tax Law § 1503, in referring to Federal "life insurance taxable income" and Federal "taxable income," distinguishes between life insurance corporations and non-life insurance corporations. Thus, petitioner, having calculated its entire net income pursuant to Tax Law § 1503 as a non-life insurance corporation, cannot calculate the Tax Law § 1510 additional tax on premiums as a life insurance company.

The Division argues that the reliance by the Administrative Law Judge and petitioner on petitioner's authorization under the Insurance Law to conduct a life insurance business in New York State rather than on petitioner's classification for Federal income tax purposes was misplaced. To hold otherwise, argues the Division, would be to allow an insurance company authorized to sell life insurance to conduct only a minimal amount of life insurance business in order to obtain the lower Tax Law § 1510(b) tax rate on premiums. This, argues the Division, is contrary to the legislative intent in enacting Article 33.

The Division points out that prior to the enactment of Article 33 in 1974, insurance companies were subject to a tax on premiums imposed by Tax Law former § 187. Under Article 33, both life and non-life insurance companies were subjected to tax both on entire net income and on premiums. The Division argues that legislative changes made in 1987 were made to ameliorate the effects of the 1986 Federal Tax Reform Act on the New York insurance industry and that this legislation envisioned that a company's classification for Tax Law § 1501 purposes would be the same as for Tax Law § 1510 purposes. The Division argues that the Administrative Law Judge incorrectly relied on ***Guardian Life Ins. Co. of Am. v. Chapman*** (***supra***) as requiring conformity of Tax Law § 1510 with the Insurance Law. Rather, the legislative history surrounding the enactment and amendments to Article 33 should control.

Petitioner argues, in opposition, that the Administrative Law Judge correctly concluded that petitioner is a "life insurance corporation" for purposes of Tax Law § 1510 and that it appropriately calculated its additional tax on premiums in accordance with Tax Law § 1510(b). It contends that the language of Tax Law § 1510 clearly supports its position making it unnecessary to look beyond the statute to legislative history in order to discern the meaning of the enactment. Further, petitioner asserts that its interpretation is the only logical interpretation of Tax Law § 1510. However, petitioner states that if resort to legislative history is necessary, it supports petitioner's position rather than that advanced by the Division.

Petitioner contends that there is no express statutory language or any indication of an intent that the Legislature, in enacting Article 33 and imposing a franchise tax on insurance companies measured by entire net income or capital, changed the recognized meaning of "life insurance corporation" as that term was used in the premiums tax to "life insurance company" as

that term is used in the Internal Revenue Code. In fact, the premiums tax was carried through the 1973 and 1974 legislation without substantive legislative change and with legislative documents that provide that no substantive change was made or contemplated.

Petitioner argues that since Tax Law § 1510 levies a tax and does not provide for a deduction, credit or exclusion, it must be narrowly construed and any doubts as to its application must be resolved in petitioner's favor. Thus, alleges petitioner, the Division and not petitioner must show that its interpretation of Tax Law § 1510 is the only correct interpretation. Petitioner states that the plain meaning of Tax Law § 1510 is clear - it distinguishes between a) life insurance corporations that are authorized to do business in New York and b) insurance corporations except life insurance corporations that are authorized in New York, but do not transact the business of life insurance. While the term "life insurance corporation" is not specifically defined in the Tax Law, petitioner argues that the Tax Law has defined insurance companies by reference to the laws of New York under which the company is organized and authorized to do an insurance business both before and after the enactment of Article 33. Thus, petitioner contends that it is the Insurance Law and not Federal income tax law which defines the term "life insurance corporation." As petitioner is a life insurance corporation which transacted the business of life insurance in the years at issue, it argues that it is properly taxed under Tax Law § 1510(b) and not Tax Law § 1510(a). Petitioner asserts that the Administrative Law Judge correctly relied on the decision of the Court of Appeals in ***Guardian Life Ins. Co. of Am. v. Chapman*** (***supra***) and found that Tax Law § 1510 is *in pari materia* with the Insurance Law.

Petitioner states that the Division's position that petitioner's status as a "life insurance company" or "insurance company other than life" for Federal tax purposes governs its status for

purposes of the franchise tax imposed on income pursuant to Tax Law § 1501 and the tax on premiums imposed pursuant to Tax Law § 1510 is without merit. Petitioner states that this position is also contrary to the decision of this Tribunal in ***Matter of United States Life Ins. Co.*** (Tax Appeals Tribunal, April 2, 1992) in which we stated: "[t]he Federal income tax imposed on insurance corporations by the Internal Revenue Code is separate and distinct from the franchise tax imposed by Tax Law § 1501."

OPINION

In addition to the franchise tax imposed by Tax Law § 1501(a) on every domestic, foreign and alien insurance corporation for the privilege of exercising its corporate franchise or doing business or employing capital or owning or leasing property in New York, Tax Law § 1510 imposes a tax on premiums on risks located or resident in New York.

Tax Law § 1510(a) provides:

> every . . . insurance corporation . . . authorized to transact business in this state under a certificate of authority from the superintendent of insurance *other than such corporations transacting the business of life insurance*, shall, for the privilege of exercising corporate franchises . . . pay a tax on all gross direct premiums, less return premiums thereon, written on risks located or resident in this state (emphasis added).

Tax Law § 1510(b) provides:

> every . . . life insurance corporation . . . authorized to transact business in this state under a certificate of authority from the superintendent of insurance, shall . . . pay a tax on all gross direct premiums, less return premiums thereon, received in cash or otherwise on risks resident in this state . . . .

The matter for resolution herein is under which section petitioner must calculate the additional tax on its premiums for the years at issue. Necessarily, this decision turns on whether

petitioner is a life insurance corporation or an insurance corporation other than a life insurance corporation.

On exception, the Division raises several of the same arguments that it presented to the Administrative Law Judge. However, it also argues that the legislative history surrounding Article 33 of the Tax Law provides significant support for its position. Specifically, the Division argues that the changes to Article 33 enacted pursuant to Chapter 817 of the Laws of 1987 "makes it clear that the Legislature intended that a life company for § 1501 purposes is a life company for premiums tax purposes and a non-life company for § 1501 purposes is a non-life company for premiums tax purposes" (Division's reply brief, pp. 16-17). The Division defines a "life company for § 1501 purposes" by reference to Internal Revenue Code § 816. That section, in turn, defines a life insurance company as one which is engaged in the business of issuing life insurance and annuity contracts if its life insurance reserves plus unearned premiums and unpaid losses not included in life insurance reserves comprise more than 50% of its total reserves.

We disagree with the Division's analysis. The legislative history cited by the Division contains only the most cursory explanation of the numerous sections of Chapter 817 that amended Article 33 of the Tax Law. A review of each of those amendments gives no indication that the Legislature intended that the provisions of the Internal Revenue Code identifying an insurance company as a life insurance company based on the nature of its reserves are deemed to be controlling to determine whether an insurance corporation is a life or non-life corporation for purposes of Article 33.

On reviewing the record before the Administrative Law Judge, we find that the Administrative Law Judge thoroughly considered the issues before her and correctly applied the

applicable law in arriving at her conclusions. We agree with the Administrative Law Judge that the provisions of Article 33 of the Tax Law which deal with the taxation of insurance companies and the provisions of the Insurance Law dealing with the same general subject matter are to be read *in pari materia*. As did the Administrative Law Judge, we find no support for the Division's argument that the classification of an insurance corporation for purposes of Tax Law § 1510 for franchise tax purposes is controlled by the provisions of the Internal Revenue Code applicable to the taxation of income of insurance corporations. Thus, we agree with the Administrative Law Judge that petitioner has demonstrated that it was a "life insurance company" under Insurance Law § 107(a)(28) (i.e., a corporation having power to do either the business of life insurance or annuities or both) and that petitioner was correct in calculating its additional franchise tax on premiums pursuant to Tax Law § 1510(b) rather than pursuant to Tax Law § 1510(a). As a result, we affirm the determination of the Administrative Law Judge for the reasons set forth therein.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of the Division of Taxation is denied;

2. The determination of the Administrative Law Judge is sustained;

3. The petition of the First Unum Life Insurance Company is granted; and

4. The Notice of Deficiency, dated August 30, 1993, and the notice asserting a greater deficiency of tax, dated September 3, 1993, shall be recomputed in accordance with the determination of the Administrative Law Judge, but are otherwise sustained.

DATED: Troy, New York
June 11, 1998

/s/Donald C. DeWitt
Donald C. DeWitt
President

/s/Carroll R. Jenkins
Carroll R. Jenkins
Commissioner

/s/Joseph W. Pinto, Jr.
Joseph W. Pinto, Jr.
Commissioner