

STATE OF ARIZONA

DEC 29 1997

DEPARTMENT OF INSURANCE DEPT. OF INSURANCE
BY ED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In the Matter of)	Docket No.97A-157-INS
)	
THE MIDLAND LIFE INSURANCE CO.,)	ORDER
(NAIC No. 66036),)	
)	
Petitioner.)	
_____)	

On December 15, 1997, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal, submitted "Recommended Decision of Administrative Law Judge" ("Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the Recommended Decision and enters the following order:

1. The recommended findings of fact and conclusions of law are adopted.
2. The Department's retaliatory tax assessments for the years 1993, 1994, 1995 and 1996 are upheld.

NOTIFICATION OF RIGHTS

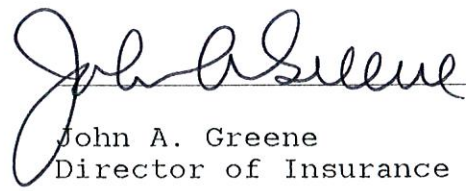
The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth the basis for such relief pursuant to A.A.C. R20-6-114(B).

The final decision of the Director may be appealed to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office of Administrative Hearings of the appeal within

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ten days after filing the complaint commencing the appeal,
pursuant to A.R.S. §41-1092.10.

DATED this 26 day of December, 1997


John A. Greene
Director of Insurance

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COPY of the foregoing mailed
this 29th day of December, 1997 to:

Charles R. Cohen, Deputy Director
Gary Torticill, Assistant Director
Kelly M. Stephens, Deputy Assistant Director
Arizona Department of Insurance
2910 N. 44th Street, Suite 210
Phoenix, AZ 85018

Office of Administrative Hearings
1700 West Washington, Suite 602
Phoenix, AZ 85007

The Midland Life Insurance Company
Attn: Gerald I. Ramspacher, Director of Taxation
250 East Broad Street
Columbus, Ohio 43215

Patrick G. Irvine
Assistant Attorney General
Office of the Attorney General
15 South 15th Avenue
Phoenix, Arizona 85007

Administrative Law Judge
Office of Administrative Hearings
Capitol Tower, West Wing
1700 West Washington, Suite 602
Phoenix, Arizona 85007

Esther Davis

- 1 5. The Department admits that the insurance agent fees were only included in
2 the odd years (1993 and 1995) and not in the even years (1994 and 1996)
3 because the State of Arizona charges such fees on a biennial basis for life
4 and disability agents in odd years pursuant to A.R.S. §20-294.
- 5 6. Midland asserts that the State of Ohio, its state of domicile, imposes agent
6 license fees on an annual basis and that the State of Arizona should apply
7 those fees for retaliatory tax purposes in a similar manner.
- 8 7. The purpose of the imposition of a retaliatory tax is to equalize the tax
9 burdens on insurers by imposing a tax on foreign insurers that conduct the
10 business of insurance in Arizona whose jurisdictions impose a greater tax
11 burden on Arizona domiciled insurers conducting the business of insurance
12 in those jurisdictions than the taxes imposed on the domestic insurers of
13 those jurisdictions.
- 14 8. A.R.S. §20-230 provides for the manner in which the retaliatory tax is to be
15 imposed by the State of Arizona. According to that statute, among other
16 things, the fees directly imposed upon similar insurers under the laws of
17 Arizona are considered in the retaliatory tax calculation.
- 18 9. The Department concedes that if, as Midland contends, the fees are divided,
19 there is less of an overall tax burden placed on Midland and there is some
20 merit to Midland's argument that biennial fees should be divided in half for
21 inclusion each year for purpose of calculating retaliatory taxes. However,
22 even if the spirit and intent of the retaliatory taxes is followed by dividing the
23 license fees for reporting and retaliatory tax calculation purposes, as Midland
24 asserts, such procedure does not comply with the language set forth in
25 A.R.S. §20-230. Pursuant to that statute, for the purpose of retaliatory tax
26 calculations, one must apply the fees and taxes *directly imposed by the*
27 *State of Arizona*. As set forth above, pursuant to A.R.S. §20-294, the State
28 of Arizona imposes life and disability agent license fees on a biennial basis.
29 Although it may seem equitable to allow those fees to be divided in half so
30 as to be included each year, the mandate of the Arizona statutes does not
allow for that interpretation or flexibility.
10. Midland argues that two other jurisdictions which impose biennial agent
license fees have permitted Midland to report the license fees each year by

1 dividing the license fees in half. However, Midland concedes that the
2 language of the statutes in those jurisdictions pertaining to retaliatory taxes
3 are not the same as that which exists in Arizona.

- 4 11. Midland also contends that the doctrine of equitable estoppel applies in that
5 a Department representative had informed Midland in 1993 that it could
6 report their agent license fees by dividing them in half and report them
7 annually even though they were imposed biennially. It is uncontroverted that
8 subsequently the Department changed its position on that issue and advised
9 Midland accordingly. The Department representative who approved the
10 division of the license fees is no longer employed by the Department.
11 12. The Department asserts, and the evidence showed, that there was no
12 detrimental reliance by Midland on the former Department representative's
13 determination concerning the division of the biennial agent license fees and
14 having them be reported on an annual basis rather than biennially. Further,
15 Midland is not subject to any penalty or fine or other additional obligations,
16 other than the retaliatory taxes imposed for the years in question, by having
17 to include the agent license fees on a biennial basis for retaliatory tax
18 purposes.
19 13. It is determined that the Arizona statutes pertaining to retaliatory taxes
20 require the State of Arizona in this case to include agent license fees on a
21 biennial basis for the purpose of computing retaliatory taxes.

22 **CONCLUSIONS OF LAW**

23 Ostensibly, Midland's argument concerning the reporting of license fees is
24 tenable. Unfortunately, Midland's argument does not prevail over the mandate of the
25 Arizona statutes regarding retaliatory taxes. Other than providing an equitable
26 argument, Midland failed to present any legal authority in support of its position.
27 Therefore, Midland did not meet its burden of establishing that the Department's
28 retaliatory tax calculation for the years of 1993, 1994, 1995 and 1996 were incorrect
29 because of the inclusion of agent license fees for the odd years of 1993 and 1995 and
30 no inclusion of such fees for the even years of 1994 and 1996.

27 . . .
28 . . .
29 . . .
30 . . .

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

RECOMMENDED ORDER

Based on the above, it is recommended that the Department's retaliatory tax assessments for the years 1993, 1994, 1995 and 1996 be upheld.

Done this day, December 15, 1997.



Lewis D. Kowal
Administrative Law Judge

•
Original transmitted by mail this
15 day of December, 1997, to:

Mr. John A. Greene, Director
Department of Insurance
2910 North 44th Street, #210
ATTN: Curvey Burton
Phoenix, AZ 85018-

By Chris Crawford Thomson