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Pennsylvania - Insurance companies may take a premium tax credit for assessments measured by their annuity receipts

In Brief

The Pennsylvania Supreme Court ruled that annuity receipts may be included in an insurer's premium tax credit calculation because the legislative intent demanded their inclusion despite the credit statute's lack of clarity. [[Allstate Insurance Co. v. Commonwealth of Pennsylvania](#), No. 68 MAP 2010, *Pennsylvania Supreme Court (8/2/12)*]

In Detail

The Guaranty Association Act (Act) was enacted to protect Pennsylvania insureds against the impairment or insolvency of insurance companies. Under the Act, an insurer doing business within the state pays assessments based on its market share of specific lines of business to the respective Guaranty Association, which uses the money to continue coverage should another insurance company writing similar business lines become insolvent. The Pennsylvania Life & Health Guaranty Association maintains the following accounts and sub-accounts into which assessments are made: (1) life insurance; (2) annuity; (3) unallocated annuity; and (4) health insurance.

The Act allows a member insurer to recoup its assessments by either: (1) raising premiums on existing policyholders; or (2) receiving an annual premium tax credit of 20% of its qualified assessments over a five year period if such premiums are guaranteed (i.e. the insurer is unable to increase their rates). The credit is calculated by multiplying the insurer's assessment(s) for a particular year by a fraction comprised of:

- A numerator equal to premiums received during the year ***on account of policies of life or health and accident insurance*** in which the premium rates may not be increased by the insurer (by only including those policies whose premiums cannot be increased by the insurer, insurers cannot take a credit on policies where the insurer has raised premiums in order to recoup the assessment); and
- A denominator equal to the total premiums received by the insurer

Denominator is calculated separately for each type of insurance product

The Pennsylvania Supreme Court (Court) found that the denominator should be calculated separately for each type of insurance product, as opposed to reflecting the sum of all collected premiums. As a result, separate fractions are calculated based on the total premiums of each assessment account and subaccount (i.e., life insurance, annuity, unallocated annuity, and health insurance).

Numerator includes annuity considerations, despite their absence in the statute

Generally, considerations from annuity contracts are fixed and cannot be increased. As a result, the only way insurers may recoup assessments paid on annuities is to take the aforementioned credit. However, the absence of annuity considerations from the credit fraction's numerator effectively results in insurers never being able to recover its assessments measured by annuity considerations.

The Pennsylvania Department of Revenue (Department) argued that the statute was clear. The credit fraction does not include annuity receipts and therefore any attempt by the Court to include annuity payments effectively rewrites the statute. The Department stressed that when a statute's language is clear, there is no need to inquire into legislative intent.

Allstate argued that the statute was ambiguous and that the clear legislative intent was to afford insurers a credit for all assessments paid under the Act that they could not recoup by raising rates. Allstate asserted that assessments, including those measured by annuities, are in the nature of advances and were intended by the legislature to be fully recoverable.

The Court was divided 3-3, resulting in an affirmation of the lower court's decision that ruled in favor of Allstate to include annuity considerations in the credit fraction numerator. The Court concluded that the statute was ambiguous, not due to confusing words or curious omission of words, but from a disparity between what the statute says is its desired result (i.e., allowing insurers to fully recoup all assessments under the Act). The Court stated that "[w]e cannot reconcile the language showing manifest and specific intent . . . with the language purporting to effectuate that purpose."

The *Allstate* case is a continuation of the insurance industry's long-standing battle to obtain equitable credit treatment for guaranty fund assessments based on annuity considerations. The previous industry attempt to resolve this matter in *Northbrook Life Insurance Co. v. Commw.*, Pa. S. Ct., Dkt. No. 93 MAP 2006, 06/16/2008, resulted in a holding that upheld the tax credit against the insurance premium tax for the proportionate share of both taxable and nontaxable annuities, but failed to provide clarity on the proportionate share computation.

Actions to think about

Despite less than clear language regarding the inclusion of annuity considerations in the Act's credit calculation mechanics, the Court found that legislative intent demanded their inclusion. This holding keeps Pennsylvania's interpretation consistent with every other state that has adopted a similar version of the credit (see footnote 2 of the decision). Note that while most states permit a credit for assessments paid to guaranty funds, Pennsylvania is unique in that its credit computation factors the assessments between creditable amounts and amounts that need to be recouped via rate increases.

Insurers writing annuities should review their guaranty fund assessments and credit computations to ensure that the proper credit is included for future premium tax returns in Pennsylvania. Further, insurers should consider amended premium tax returns to claim refunds for tax years open under the statute of limitations.

Let's Talk

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