PA Corporate Tax Notes
COMPUTATION OF INSURANCE RETALIATORY CHARGES

by Sharon R. Paxton and James L. Fritz

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In *Selective Way Insurance Co. v. Commonwealth*, No. 429 F.R. 2008 (November 30, 2010), the Commonwealth Court overruled Exceptions filed by the Commonwealth to its decision that the Pennsylvania Department of Revenue was required to apply the New Jersey premium cap (capping the amount of taxable premiums at 12.5% of worldwide premiums) when calculating the amount, if any, of Pennsylvania retaliatory charges to be paid by a New Jersey insurance company doing business in Pennsylvania. The Court determined that calculation of the retalia-tory charge requires more than simply a comparison of New Jersey and Pennsylvania premiums tax rates. The Department must determine what amount of tax would be paid to New Jersey by a Pennsylvania insurance company doing the same amount of business in New Jersey that the New Jersey insurance company has done in Pennsylvania. By ignoring the New Jersey premium cap, the Department assessed a retaliatory charge on Selective Way "based on a fictional, much higher New Jersey premium tax than what a similarly-situated Pennsylvania company would actually pay in New Jersey."

Following are notes of other Pennsylvania corporate tax developments:

Gross Premiums Tax - Credit for Guaranty Association Assessments

In *Allstate Life Insurance Co. v. Commonwealth*, 89 F.R. 1997 (October 15, 2010), a majority of the Commonwealth Court overruled Exceptions filed by the Commonwealth to its March 25, 2010 decision holding that the credit for guaranty association assessments must be computed separately for each assessment class and not on a consolidated basis for all types of covered policies. The Court also interpreted the "proportionate part factor" used to determine the proportion allowed to be credited for assessments in the annuity class to include annuity considerations in both the numerator and the denominator. Three judges dissented on the basis that, among other things, the legislative history did not support the granting of a tax credit for annuity assessments.

Calculation of Final Year KOZ Credit

Tax benefits for Keystone Opportunity Zones, Keystone Opportunity Expansion Zones and Keystone Opportunity Improvement Zones began to expire in 2010. The effective date for expiration of benefits will be December 31st of the year in which they expire. Taxpayers with a tax year end of December 31st will be entitled to credit for the entire year. Taxpayers with a tax year ending on a date other than December 31st will be entitled to a credit based on activity in the subzone or expansion subzone from the beginning of their tax year to December 31st. Corporate Tax Bulletin No. 2010-01, August 25, 2010.