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June 9, 1980

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ARIZONA ATTORNEY GENERAL

INTERAGENCY
Mr. J. Michael Low
Director of Insurance
Department of Insurance
1601 West Jefferson
Phoenix, Arizona 85007

Re: I80- 104 (R80-059)

Dear Mr. Low:

In your letter of March 7, 1980, you asked us to render an opinion on the following question:

"Does the term 'premium tax liability' as used in ARS § 20-674 include only the premium tax imposed under ARS § 20-224 or does the aforesaid term also include the additional premium tax imposed under ARS § 20-224.01?"

We understand that your question arises from the application of A.R.S. § 20-674 to the revenues collected under A.R.S. §§ 20-224 and 20-224.01.

A.R.S. § 20-674 is a part of the provisions enacted by the legislature for the administration of insolvent insurers. Section 20-674 provides that, when an insurer has paid an assessment to the Arizona property and casualty insurance guaranty fund, the fund shall then issue to each such insurer a certificate of contribution. Subsection B thereafter provides that a certificate of contribution issued to a member insurer

"... may be offset against such insurer's premium tax liability to this state in the amount of twenty percent of the assessment for the year of assessment and twenty percent of the assessment per year for each of the succeeding four years ..."

It should be noted that the maximum amount that may be assessed in any 1 year is limited to 1 percent of such insurers net

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direct written premiums for the preceding calendar year on the kinds of insurance in the account.

Arizona levies a premium tax under A.R.S. § 20-224, and also levies an additional premium tax under § 20-224.01 against certain insurers measured by premiums received from automobile insurance. Insurers receiving premiums for fire insurers are required to specify separately the tax paid on account of such fire insurance premiums.

Pursuant to A.R.S. §§ 20-224.C and 9-952, the department is required to separately account for the taxes paid by the various fire insurance companies, and the state treasurer is then required to apportion such amounts as provided by A.R.S. §§ 9-951, 9-952 and 9-972 to fund firemen's pension benefits. Pursuant to A.R.S. § 20-224.01, an additional premium tax of 1/2 of 1 percent of net premiums received from all insurance carried for or on vehicles is imposed upon foreign, alien and certain domestic insurers. Under subsection (B) of § 20-224.01, the amount of this additional tax is to be paid into the public safety personnel retirement system for deposit into the highway patrol account.

Based on the foregoing, it appears that your question is really composed of two parts:

- 1) Is the § 20-674 premium tax offset limited to taxes imposed by § 20-224, or is the offset also to be applied against the additional premium tax imposed by § 20-224.01, and
- 2) If the assessment is offset against both the § 20-224 and § 20-224.01 premium tax liability, is a part of the offset allocable to the premium taxes paid on account of premiums for fire insurance and for insurance on vehicles.

We understand that the crux of your concern is whether the Legislature intended that the amount of premium tax support for the funding of retirement benefits was to be reduced whenever an insurer paid an assessment under § 20-674.

From the language the legislature used in A.R.S. § 20-674, it appears that the intent was to allow the offset to be applied to the total premium tax liability of an insurer,

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including the liability for the additional premium taxes imposed by A.R.S. § 20-224.01. Had the legislature intended to limit the offset to the taxes imposed by § 20-224 only, it would undoubtedly have stated that in the statute. The legislative intent expressed in A.R.S. § 20-674.B is that the state will reimburse insurers for insolvency assessments over a 5-year period through the use of tax offsets. Since the unused portion of an offset is lost if not completely used in the applicable year, it would appear to be more in keeping with the legislative intent to allow the offset to be applied to taxes imposed by both § 20-224 and § 20-224.01. Such interpretation would to a small extent decrease the possibility of an insurer not being able to recoup the full amount of any insolvency assessment it may have been required to pay.

The second part of your question relates to an allocation of the offset among specific tax receipts. The premium taxes collected by the Department pursuant to A.R.S. §§ 20-224 and 20-224.01 basically fall into three categories, i.e.,

- 1) Taxes on fire insurance premiums which are allocated by § 20-224.C for firemen's pensions;
- 2) Additional taxes on vehicles, which are paid into the public safety personnel retirement system pursuant to § 20-224.01; and
- 3) The remainder of the taxes that are payable into the general fund.

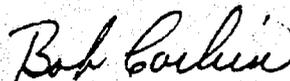
Heretofore the Department has allocated the entire offset against the tax receipts falling into category 3, and has not applied any of the offset against the tax receipts that fall into categories 1 and 2.

In general, when different statutes bear upon the same subject matter, the statutes should be construed together in an attempt to arrive at a result which would carry into effect the legislative intent expressed therein. In re Maricopa County, 15 Ariz. App. 536, 489 P.2d 1238 (1971); State v. Mackey, 15 Ariz. App. 417, 489 P.2d 80 (1971).

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The legislative intent expressed by A.R.S. §§ 20-224(C) and 20-224.01 is that the taxes received on account of premiums from fire insurance and certain vehicle insurance should be utilized in funding the retirement programs for firemen and highway patrol personnel. It is therefore doubtful that the legislature would have wanted to utilize tax receipts otherwise intended for such retirement programs to now be partially utilized for reimbursing insurers for insolvency assessments. Consequently, in order to comply with the apparent intent of the legislature, it would appear appropriate to apply the premium tax offset only to the tax receipt that are payable to the general fund. We note, in this regard, that the offset is limited to 20 percent of the assessment in each of the 5 tax years ending after the assessment. Moreover, the assessment that may be imposed in any 1 year is limited to 1 percent of an insurer's net direct written premium. It, therefore, appears most unlikely that the offset for any one year would exceed the premium taxes payable to the general fund.

Sincerely,



BOB CORBIN
Attorney General

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