

OCT 14 1994

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPARTMENT OF INSURANCE
By DUR

In the Matter of)	Docket No. 8293
)	
CINCINNATI INSURANCE COMPANY,)	ORDER
)	
Petitioner.)	
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On August 23, 1994, a hearing took place in the above-referenced matter. Assistant Attorney General Patrick Irvine appeared on behalf of the Arizona Department of Insurance ("Department"). Petitioner Cincinnati Insurance Company ("CIC") appeared through counsel, James W. Evans.

Based upon the entire record in this matter, including all pleadings, motions, testimony, and exhibits admitted during the hearing of this matter, Administrative Law Judge Gregory Y. Harris has prepared the following Findings of Fact, Conclusions of Law, and Order for the Director's consideration and approval. Based upon these recommendations, the Director makes the following Findings of Fact, Conclusions of Law and enters the following Order:

FINDINGS OF FACT

1. The Cincinnati Insurance Company ("CIC"), NAIC No. 10677, is an Ohio insurance corporation authorized to transact insurance in the State of Arizona.
2. On October 18, 1993, the Department issued an assessment notice to CIC following the Department's completion of an audit of CIC for the years 1986-1992. From the audit, the Department calculated premium tax liability and retaliatory tax

1 liability owed by CIC for tax deficiencies incurred between
2 1986-1992. The audit produced the following result:

3	a) Additional Tax Due	\$ 670.72
4	b) Penalty Due	384.71
	c) Interest Due	<u>4,110.73</u>
	d) Total Deficiency	\$ 5,116.16

5 See Exhibit A "Recap of Audit Findings for Cincinnati
6 Insurance Company"

7 3. On December 13, 1994, CIC filed a demand for
8 hearing in response to the assessment notice.

9 4. In its demand for hearing, and in other filings
10 submitted to the Administrative Law Division, CIC challenged only
11 the time frame within which the company could be held
12 responsible for tax deficiencies. In its filings, CIC raised a
13 statute of limitations defense to the assessment of tax liability
14 for the years 1986, 1987, and 1988. In no other respect has CIC
15 challenged the Department's calculation. However, the exclusion
16 of the 1986, 1987, and 1988 tax years would virtually, if not
17 entirely, eliminate the deficiency at issue in this proceeding.

18 5. The Department concedes that if the statute of
19 limitations defense raised by CIC were applicable to this
20 proceeding, the deficiency at issue in this proceeding would be
21 virtually eliminated.

22 CONCLUSIONS OF LAW

23 1. The Director has jurisdiction in this matter
24 pursuant to A.R.S. §20-142.

25 2. Notice of this hearing was proper pursuant to
26 A.R.S. §§20-163 and 41-1061.

1 3. Arizona's retaliatory tax statute, A.R.S. §20-230,
2 serves to ensure that foreign and alien insurers transacting
3 business in Arizona face the same tax burden as an Arizona
4 insurer transacting business in another state or country.
5 Pacific Mutual Life Insurance Company v. Bushnell, 97 Ariz. 18,
6 396 P.2d 253 (1964). As stated by the Bushnell court,
7 retaliatory "taxation cannot be used as an additional burden on
8 the out of state insurance company." Id. at 20-21. The court
9 further stated that "the retaliatory tax is a 'regulatory'
10 measure most successful if it produces no revenue whatsoever.
11 Raising revenue is not the purpose of these statutes." Id. at
12 21-22.

13 4. The Bushnell court also determined that another
14 state's due date for a tax constituted an "obligation" within the
15 meaning of A.R.S. §20-230(A). 97 Ariz. at 23. In reaching this
16 conclusion, the court concluded that retaliatory taxes assessed
17 pursuant to A.R.S. §20-230(A) become due on the due date for the
18 payment of the tax in the other state giving rise to Arizona's
19 assessment of a retaliatory tax. Id.

20 5. CIC urges that to the extent the Bushnell court's
21 choice of law analysis suggests that Ohio law determines the due
22 date for retaliatory taxes, then Ohio law also determines when
23 the running of the limitations period prevents the assessment of
24 a delinquent retaliatory tax obligation. This analysis leads CIC
25 to urge the applicability of either Ohio Rev. Code §5733.11(B),
26 which provides a three year period of limitations, or Ohio Rev.
27 Code §5747.13(C), which provides a four year limitations period.
28

1 6. Ohio Rev. Code §5733.11(B) does not establish the
2 limitations period applicable to the assessment of retaliatory
3 taxes pursuant to A.R.S. §20-230(A) for two reasons. First,
4 Chapter 5733 establishes the framework for Ohio's assessment and
5 collection of corporate franchise taxes, and not retaliatory
6 taxes. See Ohio Rev. Code Chapter 5729 (providing for the
7 assessment and collection of taxes, including retaliatory taxes,
8 from "Foreign Insurance Companies"). Second, Chapter 5733 of the
9 Ohio Revised Code, of which Ohio Rev. Code §5733.11 is a part,
10 has no applicability to insurers such as CIC. See Ohio Rev. Code
11 §5733.09(A) ("[I]nsurance . . . corporations required by law to
12 file annual reports with the superintendent of insurance . . .
13 shall not be subject to this chapter.").

14 7. Ohio Rev. Code §5747.13(C) does not establish the
15 limitations period applicable to the assessment of retaliatory
16 taxes pursuant to A.R.S. §20-230(A) for two reasons as well.
17 First, Chapter 5747 of the Ohio Revised Code establishes the
18 mechanism for the collection of income taxes rather than
19 retaliatory taxes. Second, the limitations period prescribed by
20 Ohio Rev. Code §5747.13(C) can only be made applicable to tax
21 obligations arising from either Chapters 5747 or 5748 of the Ohio
22 Revised Code. Ohio Rev. Code §§5747.13(A), (B). However, the
23 tax imposed upon CIC giving rise to this proceeding has no
24 connection to either Chapters 5747 or 5748 of the Ohio Revised
25 Code.

26 8. Arizona law contains a provision which provides
27 that "the state shall not be barred by the limitations of actions
28 prescribed in this chapter." A.R.S. §12-510. Ohio law does not

1 contain an analogous provision. Instead, Ohio has adopted a 10
2 year limitations period applicable to actions for which no
3 specific limitations period has been prescribed. Ohio Rev. Code
4 §2305.14. The Ohio law which controls the collection of taxes,
5 including retaliatory taxes, from insurers foreign to Ohio
6 prescribes no limitations period. See Ohio Rev. Code Chapter
7 5729. Thus, the 10 year limitations period prescribed by Ohio
8 Rev. Code §2304.14 appears to be the period which would control
9 an action brought under the Ohio law comparable to Arizona's
10 retaliatory tax law. See Chapter 5729 of the Ohio Revised Code.

11 9. The collection of the deficiency at issue in this
12 proceeding is not barred by either Ohio Rev. Code §§ 5733.11 or
13 5747.13.

14 10. The proceedings to collect the deficiency at issue
15 in this proceeding were timely initiated.

16 ORDER

17 CIC shall pay the \$5,166.16 deficiency calculated by
18 the Department and assessment by the Department. CIC shall pay
19 this deficiency within 30 days of this Order.

20
21 EFFECTIVE this 14th day of October, 1994.

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23 CHRIS HERSTAM
24 Director of Insurance

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26 GREGORY Y. HARRIS
27 Chief Administrative Law Judge
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COPY of the foregoing mailed/delivered
this 14th day of October, 1994, to:

Gay Ann Williams, Deputy Director
Charles R. Cohen, Executive Assistant Director
Gary Torticill, Assistant Director
Kelly McKay, Assistant Chief Examiner
Brian Stephan, Auditor
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Denise Romesburg for Ana Tellez
Ana Tellez

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

RECAP OF AUDIT FINDINGS FOR

NAIC #10677 - CINCINNATI INSURANCE COMPANY

TAX YEAR	ADD TAX DUE	PENALTY DUE	INTEREST DUE	YEARLY TOTAL DUE
EMIUM TAX 1986	\$0.00	\$0.00		
TALIATORY TAX 1986	\$7,194.12	\$359.71	\$863.29	
86 AUDIT TOTAL	\$7,194.12	\$359.71	\$863.29	\$8,417.12
EMIUM TAX 1987	\$0.00	\$0.00		
TALIATORY TAX 1987	(\$359.08)	\$0.00	\$820.20	
87 AUDIT TOTAL	(\$359.08)	\$0.00	\$820.20	\$461.12
EMIUM TAX 1988	\$0.00	\$0.00		
TALIATORY TAX 1988	(\$692.72)	\$0.00	\$737.08	
88 AUDIT TOTAL	(\$692.72)	\$0.00	\$737.08	\$44.36
EMIUM TAX 1989	\$1,591.70	\$25.00		
TALIATORY TAX 1989	(\$1,554.88)	\$0.00	\$741.50	
89 AUDIT TOTAL	\$36.82	\$25.00	\$741.50	\$803.32
EMIUM TAX 1990	\$0.00	\$0.00		
TALIATORY TAX 1990	(\$2,450.01)	\$0.00	\$447.50	
90 AUDIT TOTAL	(\$2,450.01)	\$0.00	\$447.50	(\$2,002.51)
EMIUM TAX 1991	\$0.00	\$0.00		
TALIATORY TAX 1991	\$0.00	\$0.00	\$447.50	
91 AUDIT TOTAL	\$0.00	\$0.00	\$447.50	\$447.50
EMIUM TAX 1992	\$0.00	\$0.00		
TALIATORY TAX 1992	(\$3,058.41)	\$0.00	\$53.66	
92 AUDIT TOTAL	(\$3,058.41)	\$0.00	\$53.66	(\$3,004.75)
	ADD TAX DUE	PENALTY DUE	INTEREST DUE	AUDIT TOTAL
REMIUM TAX DUE	\$36.82			
TALIATORY TAX DUE	\$633.90			
UNAUDITED TOTAL DUE	\$670.72	\$384.71	\$4,110.73	\$5,166.16

(1)

1) PAY THIS AMOUNT.

Return a copy of this form to the attention of:
Brian Stephan, Tax Auditor
Corporate and Financial Division

FORM E-144 Rev 8/93

AUDIT INTEREST CALCULATION WORKSHEET

COMPANY NAME: CINCINNATI INSURANCE COMPANY

IC #: 10677

REPORT YEAR	ADD TAX OR CREDIT DUE	NET ADD TAX/ CREDIT DUE	INTEREST RATE	INTEREST DUE	NET INTEREST DUE
1986	\$7,194.12	\$7,194.12	12.00%	\$863.29	\$863.29
1987	(\$359.08)	\$6,835.04	12.00%	\$820.20	\$1,683.49
1988	(\$692.72)	\$6,142.32	12.00%	\$737.08	\$2,420.57
1989	\$36.82	\$6,179.14	12.00%	\$741.50	\$3,162.07
1990	(\$2,450.01)	\$3,729.13	12.00%	\$447.50	\$3,609.57
1991	\$0.00	\$3,729.13	12.00%	\$447.50	\$4,057.07
1992	(\$3,058.41)	\$670.72	8.00%	\$53.66	\$4,110.73
