

LEADVILLE INSURANCE COMPANY,

Petitioner

v.

COMPTROLLER OF THE TREASURY

Respondent

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IN THE

MARYLAND TAX COURT

APPEAL NO. 13-IN-OO-0035

(ON REMAND FROM THE
COURT OF SPECIAL APPEALS
OF MARYLAND)

MEMORANDUM AND ORDER

The Petitioner, Leadville Insurance Company (“Leadville”), appealed the assessment of corporate income taxes in the amount of \$23,831,054.34 in tax, penalties and interest for the tax years 1996-2003. The Comptroller imposed the corporate income tax on the intercompany interest payments Leadville received from its parent corporation, Macy’s Retail Holding, Inc. (“MRHI”). The Tax Court provided analysis pertaining to Title 6-102 of the Insurance Article of the Annotated Code of Maryland (“Insurance Article”) and found that Leadville qualified as an insurance company which is exempt from the corporate income tax in Maryland.

This case is before the Tax Court from a remand by the Court of Special Appeals because the Tax Court failed to address the implications of Title 4 of the Insurance Article. The Court of Special Appeals held that Leadville, as an insurance company, does not (and is not required) to hold a certificate of authority from the Maryland Insurance Commissioner and is an unauthorized insurance company and therefore is regulated by Title 4 of the Insurance Article. The sole issue on remand for the Tax Court to decide is whether Title 4 provides a corporate tax exemption to insurance companies such as Leadville.

The Respondent, Comptroller of the Treasury ("Comptroller"), argues that Leadville, as an unauthorized insurance company, is subject to Maryland corporate income tax because Title 4 imposes a tax on insurance premiums, not insurance companies. Leadville did not earn Maryland premiums during tax years ending 1997 through 2003 but had substantial income related to nonpremium-related investment income. Comptroller seeks to tax the investment income of Petitioner by an assessment of corporate income tax in addition to a tax on premiums. Any fair reading of the statutes would conclude that the Insurance Article imposes a tax on insurance companies and that the measure of such tax is Maryland premiums. The fact that Leadville paid no income tax on premiums does not alter the language of Title 4 of the Insurance Articles which imposes a premium receipt tax instead of "all other state taxes."

Leadville was a Vermont-licensed insurance company that did not hold a certificate of authority issued by the Maryland Insurance Commissioner to engage in the insurance business in Maryland. Comptroller contends that Leadville should be considered a financial institution like a bank. However, Maryland treats insurance companies different than financial institutions and foreign corporations which pay tax on the portion of its income derived from in-state activities or business. Authorized insurance companies pay tax on premium receipts under Title 6, and unauthorized insurance companies pay premium receipts tax imposed under Title 4.

Leadville, as an unauthorized insurance company, engages in re-insurance transactions and is not required to possess a certificate of authority. Title 4 of the Insurance Article determines what taxes are required to be paid by an unauthorized insurance company. Comptroller contends that even if Leadville paid premium receipts tax, Leadville would not be exempt from corporate income tax because the Title 4 exemption applies only to insurance-related income. Such a

characterization of income is not defined in the Insurance Article or the Tax-General Article. In fact, all insurance companies, whether authorized or unauthorized, earn non-premium income in order to obtain adequate capital to cover their business risks. As a re-insurer, Leadville's income (which includes its premium and interest income) provides enough capital for Leadville to meet its obligations in the event of a covered loss.

The Comptroller also contends that the exemption language in Section 4-209(c) of the Insurance Article ("all other State taxes") is meant to only exempt unauthorized issuers from sales and use tax. In *MEDCO v. Montgomery County*, 431 Md.189 (2013), the Court of Appeals considered a similar issue. The statute provided in part that the taxpayer "is exempt from any requirement to pay taxes or assessments on its properties or activities." Montgomery County attempted to restrict the language by interpreting the statute's words to exempt only direct taxes and not excise taxes. The Court ruled for MEDCO and interpreted "all or any" taxation to mean that the Legislature chose a broad and expansive meaning rather than a qualified or restricted meaning. Similarly, Section 4-209 (c) of the Insurance Article clearly suggests that the Legislature intended that unauthorized insurance companies are taxed on premium receipts under Title 4 of the Insurance Article and are exempt from all other State taxes.

The Court has also reviewed the legislative history provided by both parties and finds no basis for the Comptroller's position that the income of any unauthorized insurer is subject to Maryland corporate income tax. The General Assembly re-codified Article 48A into Section 4-202 of the Insurance Article with the intention of providing that the Maryland Insurance Commissioner and not the Comptroller would have the power to enforce tax statutes applicable to unauthorized insurers. The language "instead of all other state taxes" in Section 4-209(c) of the

Insurance Article is intended to preclude the imposition of Maryland corporate income tax by the Comptroller:

Finally, Comptroller's predominant complaint to Leadville's position is that it "defies logic or common sense" to conclude that the General Assembly intended Section 4-209(c) of the Insurance Article to shelter Leadville from all tax on approximately Two Billion Dollars of non-premium receipts income. However, the only logical interpretation is that the General Assembly understood that corporate income tax was included in the meaning of "all other State taxes" set out in the Section 4-209(c) exemption. The Court is not persuaded by the Comptroller's dismissive interpretation of the plain meaning of Title 4 or Title 6 of the Insurance Article.

In conclusion, the Court finds that Leadville was exempt from filing a Maryland corporate income tax return and paying Maryland corporate income tax for the tax years at issue. Accordingly, it is this 13th day of July, 2020, ORDERED, by the Maryland Tax Court, that the imposition of the corporate income tax by the Respondent is hereby REVERSED.

CC: Herman B. Rosenthal, Esq.
Scott L. Brandman, Esq.
Murray Singerman, Esq.

CERTIFIED TRUE COPY
TEST: John T. Hearn, Clerk

NOTICE: You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.