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BUREAU OF LAW

MEMORANDUM

TO: Commissioner Murphy, Macduff and Conlon

FROM: E. H. Rost, Counsel

SUBJECT: American Credit Indemnity Co. of New York
Applications for revision or refund for quarters ended December 31, 1960, 1961, 1962, 1963

Petition for redetermination of deficiency or for refund for quarter ended December 31, 1964

Taxpayer, a domestic corporation, issues a "Policy of Credit Insurance" guaranteeing against loss on accounts receivable by reason of insolvency of debtors. The policy also provides for collection of accounts, some of which may be partially or totally uninsured under the policy. A premium is payable on issuance of the policy, and collection charges are imposed, pursuant to a schedule in the policy. Accounts may be uninsured because of insufficient indemnity limits, breach of policy condition, failure to give timely notice of insolvency, for indebtedness or insolvency prior to inception or subsequent to expiration of policy term, or other reasons.

Under the policy (Condition 4) an insured who files a notice of claim "must place the entire account with the Company for collection and collection." The insured's failure to advance legal fees and costs promptly is construed as a withdrawal of the account (Condition 5). An account withdrawn "may not be reflled under this or any other policy issued by the Company" (Condition 4).

The Insurance Department advised that the taxpayer had omitted from computation of franchise taxes under section 187 of the Tax Law the receipts of collection fees under Condition 5 of its policy, for the quarters ended December 31, 1960, 1961, 1962, 1963 and 1964. The Corporation Tax Bureau issued assessments for such periods finding that such collection fees are premiums as defined in section 590 of the Insurance Law. The taxpayer filed applications for revision or refund and a petition for redetermination, contending (1) that its collection fees are not taxable as premiums under section 187 of the Tax Law, (2) that the definition of "premium" contained in section 590 of the Insurance Law is limited to imposition of premium tax on foreign and alien insurers, and is not

applicable to domestic insurers under section 187 and (3) that, in any event, the portion of collection fees earned on uninsured accounts, or portions thereof, cannot be deemed premiums, as no insurance was afforded under the policy.

Section 750 of Article XVII of the Insurance Law defines "premiums" so as to include "all amounts received as consideration for insurance contracts or reinsurance contracts, other than for annuity contracts, and shall include premium deposits, assessments, policy fees, membership fees, and every other consideration for such contract" (emphasis added). Article XVII is captioned, "Taxes and Fees" and is not restricted to foreign or alien insurers, although certain sections of the Article deal with such insurers.

Section 187 of the Tax Law, which imposes a franchise tax on insurance corporations, is not restricted in its application to domestic insurers, and imposes a tax on premiums "in addition to any other taxes imposed" for the privilege of exercising the corporate franchise in New York.

The first paragraph of section 46 of the Insurance Law which limits the power of insurance companies, provides, "In addition to any power to engage in any other kind of business than an insurance business which is specifically conferred by the provisions of this chapter, any insurer authorized to do business in this state may engage in such other kind or kinds of business to the extent necessarily or properly incidental to the kind or kinds of insurance business which it is authorized to do in this state."

Subdivision 17 of section 46 of the Insurance Law defines credit insurance as the indemnification against loss resulting from the non-payment of debt "including the incidental power to acquire and dispose of debts so insurred, and to collect any debts owed to such insurer or to any person so insured by him."

Consequently, taxpayer in contending that its collection fees, or that portion derived from uninsured accounts, are not premiums argues that it is engaged in the collection business, a business not authorized by the Insurance Law. To sustain the legality and regularity of the taxpayer's collection activities as adjuncts of its credit insurance business, such activities must be deemed necessarily or properly incidental

and the fees must constitute premiums, and be taxable as such. Collection procedures and the fees payable are an integral part of the policy, and serve to reduce the insurer's losses and costs, similar in effect to charges for title examinations which were held to be includible in premiums in Matter of City Title Insurance Company, 31 Misc. 2d 1013 aff'd 15 A.D. 2d 706, aff'd 13 N.Y. 2d 628.

I am of the opinion that the collection fees received by the taxpayer under the policy are compensation for the policy. The collection procedures are related and incidental powers granted to the insurer under the policy, and the policyholder, in addition to the initial premium, contracts to place the entire account with the insurer for collection and to pay collection fees. His failure to do so results in lapse of insurance on the entire account. While the amount of the collection fee is not fixed at inception, it is ascertainable, and is an earned premium computed as an audit premium would be. The definition of "premium" contained in section 350 of the Insurance Law must be held applicable to section 187 of the Tax Law. Taxation of insurance companies is divided between the Tax Law and the Insurance Law, and being in pari materia they must be construed as applicable to each other, Equitable Life Insurance Co. v. Chapman, 302 N.Y. 226. Moreover, it was the apparent intent of the Legislature to read the sections together as is evidenced by an enactment of Chapter 163 of the Laws of 1964 which amended both. In fact, section 187 of the Tax Law makes numerous references to various sections of Article XVII of the Insurance Law and section 350 of the Insurance Law, as amended, makes a specific reference to section 187 of the Tax Law.

I am of the further opinion that merely because some of the fees earned by the taxpayer were related to accounts, or portions of accounts for which no insurance was afforded; that the policy contains a co-insurance clause; or that the extent of the insurer's liability will be computed by variable factors not fixed until a loss occurs, does not change the nature of the payments as premiums. The payments are made under the policy as consideration for the policy. Co-insurance clauses and deductible provisions in insurance policies are common and do not affect the character of the premium as such, although in both cases, the property, or part of it may not be insured and although the value of such property may be included in the premium base.

Accordingly, I agree with the conclusions set forth in the determinations and decision proposed.

/s/ E. H. BEST

[redacted]

Approved
May 16, 1967

6-27-67

STATE OF NEW YORK

THE STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS

OF

AMERICAN CREDIT INDEMNITY COMPANY OF NEW YORK

FOR REVISION OR REFUND OF FRANCHISE TAX UNDER SECTION 187 OF ARTICLE 9 OF THE TAX LAW FOR THE QUARTERS ENDED DECEMBER 31, 1960, DECEMBER 31, 1961, DECEMBER 31, 1962 AND DECEMBER 31, 1963.

American Credit Indemnity Company of New York, the taxpayer herein, having filed applications for revision or refund of franchise taxes under Section 187 of Article 9 of the Tax Law, and a hearing having been held in connection therewith at the office of the State Tax Commission in New York City on December 9, 1966, before William F. Sullivan, Hearing Officer of the Department of Taxation and Finance, at which hearing, John W. Eller, Vice President of the taxpayer, appeared personally and testified, together with Alfred Miller, Esq., of Counsel, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) The taxpayer was incorporated under the laws of New York State on or about April 28, 1893, and is engaged in the business of writing credit insurance;

(2) That based on information from the Insurance Department, additional taxes were assessed on May 2, 1966, as follows:

Quarter Ended	Fees Allocable to New York	Added Tax @ 6.5%
12/31/60	$15,378.98	$ 271.38
12/31/61	62,944.85	1,258.89
12/31/62	61,325.53	1,226.51
12/31/63	50,139.42	1,162.79

(3) That applications for revision or refund were filed on June 10, 1966;

(4) That the taxpayer writes and issues a form of policy known as "Credit Insurance"; that the policy provides for a stipulated basic premium; that during the years under review the policy provided, among other things, for indemnification to the insured against loss due to the insolvency of the insured's debtors;

(5) That Condition 2 of the policy provides that during the term of the policy the insured at his option may file with the taxpayer for collection an account against a debtor not insolvent as defined in Condition 3 of the policy; that in such instances as well as in instances of insolvency as defined in the policy, certain collection charges set forth in Condition 5 of the policy are made to the insured for services in collecting such delinquent and/or insolvent accounts; that in 1960 the provisions of the policy were changed to provide that a debtor must be insolvent at the date of filing to qualify for the free service provisions of the policy; that in October 1964 the policy was amended so as to provide free service on all collections made with respect to insolvent accounts;

(6) That in the calendar year 1964, and with only a slight variance for the years under review, 25.7% of accounts received for collection were not covered by credit insurance issued by the taxpayer due to the following reasons:

1. In the majority of cases policyholders made sales and shipments in excess of the limited amount of coverage in effect,

2. Many accounts filed for collection were past due one or more years, and therefore, were not covered by the policy then in force,

3. Upon issuance of a new policy, in some instances, prior sales were not covered by the policy, but upon filing the claim for shipments made during the policy period, portions of the entire account were on shipments made prior to the inception date of the policy.

(7) That Section 187(1) of the Tax Law imposes a premium tax on every domestic insurance corporation, other than one transacting the business of life insurance, for the privilege of exercising its corporate franchise or for carrying on business in a corporate or organized capacity within this state, and is in addition to any other taxes imposed for such privilege; that subdivision 3 of Section 187 sets forth the formula for determining the amount of direct premiums taxable under subdivisions 1 and 3 of that section and under subdivisions 1 and 3 of Section 332 of the Insurance Law; that Section 187 contains no definition of the term "premium";

(8) That Section 350(1) of the Insurance Law defines "insurer" as every organization or entity doing an insurance business in this state and every such insurer is deemed an "insurance corporation" within the meaning of the laws of this state; that Section 350 defines "premium" to include all amounts received as consideration for insurance contracts and includes every compensation for such contract; that in

the case of Guardian Life Insurance Company vs. Chapman, 302 N.Y. 226, 97 N.E. 2d 877(1951), the Court of Appeals held that the two laws (Tax Law, Insurance Law) are in pari materia and must be read together and applied harmoniously and consistently; that Section 46(17), from which the taxpayer's writing powers are derived, provides that "credit insurance" means indemnifying merchants or other persons extending credit, against loss or damage resulting from the non-payment of debts owed them; and including the incidental power to acquire and dispose of debts so insured, and to collect any debts owed to an insurer thus authorized, or to any person so insured by such insurer; that the taxpayer's authority to do business in the state, as limited by the first unnumbered paragraph of Section 46 of the Insurance Law, includes, "such other kind or kinds of business to the extent necessarily or properly incidental to the kind or kinds of insurance business which it is authorized to do in this State."

(9) That taxpayer's collection procedures and receipts of collection fees are an integral part of the policy, and serve to reduce the insurance carrier's losses and costs; that the insured, in addition to the initial premium, contracts to place the entire account, including any portion thereof for which no insurance coverage may be afforded under the policy, with the insurer for collection and to pay the collection fees; that the insured's failure to place the entire account with the insurer for collection results in lapse of insurance on the entire account or any portion thereof for which insurance may be afforded under the policy; that the amounts of the collection fees are

ascertainable under the policy in a manner similar to audit premiums.

Based upon the foregoing findings the State Tax Commission hereby

DETERMINES:

(A) That the taxpayer's collection activities are an integral part of its insurance business; that the same are necessarily or properly incidental to the kind of insurance business which it is authorized to transact; that collection fees received by the taxpayer under its policies are direct premiums within the meaning of Section 187 of the Tax Law.

(B) That the assessments imposing additional franchise taxes on the taxpayer for the quarters ended December 31, 1960, December 31, 1961, December 31, 1962 and December 31, 1963 are correct; that said assessments do not include any taxes or other charges which could not have been lawfully demanded, and that taxpayer's applications for revision or refund with respect thereto are hereby denied.

Dated: Albany, New York this 27th day of Sept. 1967.

THE STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
PRESIDENT

/s/ JAMES R. MACDUFF
COMMISSIONER

Walter Moslow Burden
COMMISSIONER

STATE OF NEW YORK

THE STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

AMERICAN CREDIT INDEMNITY COMPANY OF NEW YORK

FOR A REDETERMINATION OF A DEFICIENCY OR FOR REFUND OF FRANCHISE TAX UNDER SECTION 187 OF ARTICLE 9 OF THE TAX LAW FOR THE QUARTER ENDED DECEMBER 31, 1964.

American Credit Indemnity Company of New York, having filed a petition for redetermination of a deficiency or for refund of franchise tax under Section 187 of Article 9 of the Tax Law for the quarter ended December 31, 1964, and a hearing having been held in connection therewith at the office of the State Tax Commission in New York City on December 9, 1966, before William F. Sullivan, Hearing Officer of the Department of Taxation and Finance, at which hearing, John W. Miller, Vice President of the taxpayer, appeared personally and testified, together with Alfred Miller, Esq. of Counsel, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) The taxpayer was incorporated under the laws of New York State on or about April 28, 1893, and is engaged in the business of writing credit insurance;

(2) That based on information from the Insurance Department, a statement of audit change was issued on May 2, 1966, as follows:

Quarter	Fees Allocable to New York	Tax at 2%	Interest	Total
12/31/64	$48,753.76	$975.08	$68.35	$1,043.43

(3) That the amount of $1,043.43 was paid and after a denial of a claim for refund a petition for refund was filed on November 20, 1966;

(4) That the taxpayer writes and issues a form of policy known as "Credit Insurance"; that the policy provides for a stipulated basic premium; that during the quarter under review the policy provided, among other things, for indemnification to the insured against loss due to the insolvency of the insured's debtors;

(5) That Condition 2 of the policy provides that during the term of the policy the insured at his option may file with the taxpayer for collection an account against a debtor not insolvent as defined in Condition 3 of the policy; that in such instances as well as in instances of insolvency as defined in the policy, certain collection charges set forth in Condition 5 of the policy are made to the insured for services in collecting such delinquent and/or insolvent accounts; that in 1960 the provisions of the policy were changed to provide that a debtor must be insolvent at the date of filing to qualify for the free service provisions of the policy; that in October 1964 the policy was amended so as to provide free service on all collections made with respect to insolvent accounts;

(6) That in the calendar year 1964, 25.7% of accounts received for collection were not covered by credit insurance issued by the taxpayer due to the following reasons:

1. In the majority of cases policyholders made sales and shipments in excess of the limited amount of coverage in effect,

2. Many accounts filed for collection were past due one or more years, and therefore, were not covered by the policy then in force,

3. Upon issuance of a new policy, in some instances, prior sales were not covered by the policy, but upon filing the claim for shipments made during the policy period, portions of the entire account were on shipments made prior to the inception date of the policy.

(7) That Section 187(1) of the Tax Law imposes a premium tax on every domestic insurance corporation, other than one transacting the business of life insurance, for the privilege of exercising its corporate franchise or for carrying on business in a corporate or organized capacity within this state, and is in addition to any other taxes imposed for such privilege; that subdivision 5 of Section 187 sets forth the formula for determining the amount of direct premiums taxable under subdivisions 1 and 3 of that section and under subdivisions 1 and 3 of section 332 of the Insurance Law; that Section 187 contains no definition of the term "premium";

(8) That Section 330(1) of the Insurance Law defines "insurer" as every organization or entity doing an insurance business in this state and every such insurer is deemed an "insurance corporation" within the meaning of the laws of this state; that Section 330 defines "premium" to include all amounts received as consideration for insurance contracts and includes every compensation

for such contract; that in the case of Guardian Life Insurance Company vs. Chapman, 302 N.Y. 236, 97 N.E. 2d 879(1951), the Court of Appeals held that the two laws (Tax Law, Insurance Law) are in pari materia and must be read together and applied harmoniously and consistently; that Section 46(17), from which the taxpayer's writing powers are derived, provides that "credit insurance" means indemnifying merchants or other persons extending credit, against loss or damage resulting from the non-payment of debts owed them; and including the incidental power to acquire and dispose of debts so insured, and to collect any debts owed to an insurer thus authorized, or to any person so insured by such insurer; that the taxpayer's authority to do business in the State, as limited by the first unnumbered paragraph of Section 46 of the Insurance Law, includes, "such other kind or kinds of business to the extent necessarily or properly incidental to the kind or kinds of insurance business which it is authorized to do in this State."

(9) That taxpayer's collection procedures and receipts of collection fees are an integral part of the policy, and serve to reduce the insurance carrier's losses and costs; that the insured, in addition to the initial premium, contracts to place the entire account, including any portion thereof for which no insurance coverage may be afforded under the policy, with the insurer for collection and to pay the collection fees; that the insured's failure to place the entire account with the insurer for collection results in lapse of insurance on the entire account or any portion thereof for which insurance may be afforded under the policy; that the amounts of the collection fees are

ascertainable under the policy in a manner similar to audit premiums.

Based upon the foregoing findings the State Tax Commission hereby

DECIDES:

(A) That the taxpayer's collection activities are an integral part of its insurance business; that the same are necessarily or properly incidental to the kind of insurance business which it is authorized to transact; that collection fees received by the taxpayer under its policies are direct premiums within the meaning of Section 187 of the Tax Law.

(B) That the statement of audit changes re-computing taxpayer's franchise taxes for the quarter ended December 31, 1964 is correct; that the same does not include any taxes or other charges which could not have been lawfully demanded, and that taxpayer's petition for re-determination or for refund with respect thereto is hereby denied.

Dated: Albany, New York this 27th day of Sept. 1967.

THE STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
PRESIDENT

/s/ JAMES R. MACDUFF
COMMISSIONER

Walter Moelyn Dunbar
COMMISSIONER