

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION BOARD HEARING SUMMARY**

In the Matter of the Petition for Redetermination )  
Under the Tax on Insurers Law of: )  
CALIFORNIA INSURANCE COMPANY ) Account Number IT ET 34-002366  
Petitioner ) Case ID 457613  
Omaha, Nebraska )

Type of Business: Group insurance provider

Audit period: 01/01/04 – 12/31/05

<u>Item</u>	<u>Disputed Amount</u>
Tax on insurance premiums	\$603,385
Tax as determined and protested	\$603,385.00
Interest through 06/30/12	<u>337,950.21</u>
Total tax and interest	<u>\$941,335.21</u>
Monthly interest beginning 07/01/12	<u>\$ 3,016.93</u>

**UNRESOLVED ISSUE**

**Issue:** Whether the insurance transactions at issue are subject to California’s Tax on Insurers.

We conclude the transactions are subject to tax.

Petitioner is a property and casualty insurance company that maintains an office in California. The subject transactions are group insurance policies petitioner wrote in 2004 and 2005, for insurance of California employees through group accident and health insurance plans it issued to “employer-policyholders” located in Idaho. In 2005, petitioner also covered California employers through employment practices liability insurance. All insureds covered under the group policies were located in California and, therefore, all the risk was located in California. Petitioner sent certificates of insurance to the California insureds to confirm coverage. The California insureds were responsible to pay the premiums, and did so through the Idaho policyholders. Petitioner reported the full measure of the premiums on National Association of Insurance Commissioners forms and paid the premium taxes on the subject transactions to Idaho, not California, because Idaho is the “situs” of the group insurance policies and the Idaho employer-policyholders.

1 The California Department of Insurance (DOI) determined that petitioner owed the premium  
2 taxes at issue to California. DOI's determination primarily relied on a risk allocation methodology to  
3 allocate the premiums in the Idaho-California transactions; it did not rely on the location of the policies  
4 or policyholders. DOI asserted that Idaho law did not require petitioner to report and pay tax to Idaho  
5 and that Idaho's law is consistent with California's analysis.

6 Petitioner contends that the location of the policy and employer-policyholder governs where the  
7 taxes are owed, not the location of the certificate holders (members) or the location of risk. According  
8 to petitioner, it did not transact business in California and its only act in California related to the  
9 policies was its issuance of certificates of insurance to the California insureds to confirm coverage.  
10 Petitioner asserts that those certificates were not part of the policies but were merely evidence of  
11 insurance. Petitioner argues that to conclude it owes gross premium taxes to California when its only  
12 act (transaction) in California was to issue certificates of insurance would violate its federal due  
13 process rights. Further, petitioner contends that, if Idaho and California are in conflict such that both  
14 states require payment, it is inequitable to require petitioner to now pay premium taxes to California  
15 for the years 2004 and 2005, after it has already paid them to Idaho. Thus, petitioner argues that it  
16 should receive a credit against the California tax for the amount of tax it paid to Idaho. As part of the  
17 equity analysis, petitioner states that: (1) it is now paying these types of premium taxes to California,  
18 thus risking an Idaho tax action, (2) it paid more taxes to Idaho during the audit period than it would  
19 have had to pay to California, and (3) it cannot get a refund from Idaho for 2004 and 2005 because  
20 Idaho has a one-year statute of limitations on taxpayer refund requests.

21 All the insureds resided in California, the premiums were received from California citizens, and  
22 petitioner maintained an administrative office in this state from which to administer the disability  
23 policies. While we acknowledge that petitioner is headquartered in Idaho, issued the policies in Idaho,  
24 and may have physically received premiums in Idaho from the Idaho employers, we find the evidence  
25 shows that petitioner was also doing business in California. The relative weight we give the various  
26 factors compels a conclusion that, for the purposes of the policies at issue, petitioner was doing  
27 business in California, rendering its premiums subject to California's gross premiums tax.

1 With regard to petitioner's alternative argument that it should be given credit for the premiums  
2 tax paid to Idaho, we note that, but for the expiration of Idaho's one-year statute of limitations,  
3 petitioner could have claimed a refund of the tax paid to Idaho on these policies for 2004 and 2005. In  
4 any event, the Board lacks equity powers and is bound by statute. There is no California authority that  
5 allows us to grant petitioner an allowance or credit against the tax liability owed to California based on  
6 petitioner's erroneous payment of the tax to Idaho. We find that, contrary to petitioner's assertion,  
7 assessing the tax at issue here does not violate petitioner's due process rights because petitioner sought  
8 the benefits and protections of California law for the subject insurance policies, rendering California's  
9 assessment of the premium tax consistent with federal constitutional principles.

10 **OTHER MATTERS**

11 None.

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13 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III  
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