

L. JOYCE HAMPERS
COMMISSIONER

The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204

July 20, 1981

The ("Association"), is a joint underwriting and reinsurance association established under Massachusetts General Laws Chapter 175C, Section 4, to provide fire and homeowners insurance for property owners unable to obtain such insurance by other means. You inquire whether the Association may itself file premium excise returns and pay the premium excise directly to the Commissioner of Revenue on business transacted through the Association.

The Association consists of all insurers licensed to write and engaged in writing basic property insurance or any component thereof in Massachusetts on a direct basis, in multiperil policies; every such insurer must be a member of the Association to engage in such business in Massachusetts.

The Association issues policies on behalf of its member insurers handles all claims, and makes all loss payments. All member insurers participate in the Association's writing, expenses, profits and losses in the proportion that the premiums written by each such insurer (with certain exceptions) bear to the aggregate premiums written in Massachusetts by all member insurers. Each insurer's participation is determined annually on the basis of such premiums written during the preceding calendar year as disclosed in the annual statements and other reports filed by the insurer with the Commissioner of Insurance.

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The Association is governed by a board of eighteen directors; ten directors are elected annually by the members of the Association, and eight are appointed annually by the Commissioner of Insurance. (The eight comprise two representatives of associations of insurance agents and brokers doing business in Massachusetts, and six public representatives not affiliated with the insurance industry.)

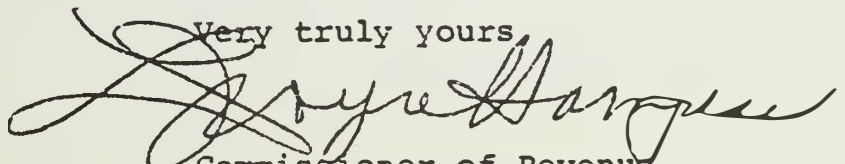
Under General Laws Chapter 62C, Section 12(e), every insurance company liable to taxation under Chapter 63, Section 22, 22A, 22B or 23 must make a return to the Commissioner of Revenue annually on or before March 15.

Member insurers of the Association are taxable under Sections 22 and 23 of Chapter 63, which require annual payment of a premium excise by every domestic and foreign insurance company coming within the scope of the definitions of domestic and foreign companies under Section 1 of Chapter 175, with exceptions not here relevant. That section defines "company" as including "all corporations, associations, partnerships or individuals engaged as principals in the business of insurance..."

Under Section 25 of Chapter 175, every "company" as defined in Chapter 175, Section 1 must file an annual statement with the Commissioner of Insurance showing its financial condition and its business for the previous year. The Commissioner of Insurance does not require the Association to file such an annual statement.

Based on the foregoing, it is ruled that since the Association is not engaged as a principal in the insurance business, it may not file premium excise returns or pay the excise directly on business transacted through the Association.

Very truly yours,



Commissioner of Revenue

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