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Letter Ruling 12-3: Inapplicability of Brownfields Tax Limitation to Insurance Premium Excise

March 1, 2012

You have requested a ruling on behalf of ***** (hereinafter, "the Taxpayer"), an insurance company headquartered in *****. In particular, you inquire as to whether insurance companies that are subject to the gross insurance premium excise taxes set out in G.L. c. 63, §§ 20-29E may claim the Brownfields Tax Credit against their insurance premium excise liability without regard to the provisions of G.L. c. 63, § 32C or G.L. c. 62, § 6(j)(3), which otherwise limit such credit to fifty percent of the tax imposed.

I. FACTS

The following is a statement of facts you have provided and upon which this letter ruling is premised. The Taxpayer is an insurance company subject to the gross premiums excise imposed by G.L. c. 63, §§ 22-23. It expects to receive a Brownfields Tax Credit via transfer, sale or assignment as authorized by G.L. c. 63, § 38Q(g) and G.L. c. 62, § 6(j)(5) and expects to apply the credit to its insurance premium excise tax liability.

II. RULING REQUESTED

May an insurance company utilize a Brownfields Tax Credit that it has purchased from another taxpayer without regard to the provisions of G.L. c. 63, § 32C or G.L. c. 62, § 6(j)(3) which otherwise limit such credit to fifty percent of the tax imposed by G.L. c. 63, § 39 or G.L. c. 62?

III. RULING

Yes. By its express terms, G.L. c. 63, § 32C limits "the maximum amount of credits, otherwise allowable in any one taxable year to a corporation," to fifty percent of the excise imposed by G.L. c. 63, § 39. Likewise, G.L. c. 62, § 6(j)(3) limits the Brownfields Credit to fifty percent of the tax imposed by G.L. c. 62. Insurance companies are not subject to the tax imposed by G.L. c. 63, § 39 or G.L. c. 62. Rather, the provisions of G.L. c. 63, §§ 20-29E govern the tax obligations of these entities which, generally, are premised upon a percentage of gross premiums for policies written or renewed. For this reason, the fifty percent limitation would not apply.

IV. DISCUSSION

The Brownfields Tax Credit authorized by G.L. c. 63, § 38Q and G.L. c. 62, § 6(j) is available to an eligible person who commences and diligently pursues an environmental response action on or before August 5, 2013^[1] and achieves and maintains a permanent solution or remedy operation status in compliance with G.L. c. 21E and the regulations adopted under that chapter. Both G.L. c. 63, § 38Q(g) and G.L. c. 62, § 6(j)(5) as amended by sections 64 and 50 of chapter 123 of the acts of 2006 provide that all or any portion of a Brownfields Tax Credit may be transferred, sold or assigned to a taxpayer with a liability under G.L. c. 62 or G.L. c. 63 or to a nonprofit organization. By its terms, a Brownfields Credit granted pursuant to G.L. c. 63, § 38Q "shall be subject to the provisions of section 32C [of chapter 63]." Section 32C provides in pertinent part that "the maximum amount of credits, otherwise allowable in any one taxable year to a corporation, shall not exceed fifty per cent of its excise imposed by section thirty-two^[2] or thirty-nine." Likewise, G.L. c. 62, § 6(j)(3) provides that the maximum amount of credits otherwise allowable in any taxable year to a personal income taxpayer shall not exceed fifty percent of the tax imposed by chapter 62.

In *Manufacturer's Life Insurance Co., Inc. v. Commissioner of Revenue*, ATB Docket Nos. C276919, C276920, C282740 & C287495, (November 5, 2009), the Appellate Tax Board dealt with the fifty percent limitation in the context of the Economic Opportunity Area Credit (EOAC). The Board noted that the appellant there, an insurance company, did not "pay excise under §§ 32 or 39, the sections which are specified in section 32C." The Board ruled that the taxpayer there "was entitled to take the credit against 100% of the excise imposed under § 23." Like the taxpayer in *Manufacturer's Life*, the Taxpayer is an insurance company that is subject to the premium excise imposed by G.L. c. 63, §§ 20-29E. It is not subject to taxation pursuant to G.L. c. 63, § 39 (corporate excise) or G.L. c. 62 (personal income tax). [\[3\]](#)

V. CONCLUSION

Based upon the foregoing, the Taxpayer may claim transferred Brownfields Tax Credits without regard to the limitations imposed by G.L. c. 63, § 32C or G.L. c. 63, § 6(j)(3).

Very truly yours,

/s/Amy Pitter

Amy Pitter
Commissioner of Revenue

AP:MTF:ds

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[\[1\]](#) This deadline was extended from August 5, 2011 by the provisions of St. 2010, c. 240, § 127.

[\[2\]](#) G.L. c. 63, § 32 was repealed by St. 2008, c. 173, § 47 for tax years beginning on or after January 1, 2009 and G.L. c. 63, § 39 was amended to encompass both foreign and domestic business corporations.

[\[3\]](#) Subsequent to the *Manufacturer's Life* decision, G.L. c. 63, § 38N was amended for taxable years commencing on or after January 1, 2010 to cap the EOAC at "an amount not to exceed 50 per cent of such liability in a taxable year" for a taxpayer with a liability under any section of chapter 63. G.L. c. 63, § 38N(a) as amended by St. 2009, c. 166, § 23.