

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

MONTANA MEDICAL BENEFIT PLAN,))	DOCKET NO.: CT-1997-1
Appellant,))	
-vs-))	
THE DEPARTMENT OF REVENUE))	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,))	CONCLUSIONS OF LAW,
Respondent.))	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on June 5, 2001 in the City of Kalispell, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

The taxpayer, represented by James M. Ramlow, attorney, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Michele Crepeau, tax counsel, presented testimony in opposition thereto. Melissa Kopp, auditor, was also present but did not offer testimony.

Testimony was presented and exhibits were received. The Board having fully considered the testimony, exhibits and all things submitted, finds and concludes as follows.

The duty of this Board is to determine whether the taxpayer is subject to the Montana corporate license tax under Section 15-31-101 (3), MCA. Montana Medical Benefit Plan (MMBP) is the appellant in this proceeding and, therefore, has the burden of proof. Based on the evidence and testimony, the Board finds that MMBP satisfactorily met its burden of proof and it will reverse the decision of the Department of Revenue.

STATEMENT OF ISSUE

MMBP, as a health service corporation, provides health benefit plans for its members. Is MMBP subject to Montana corporate license tax under Section 15-30-101 (3), MCA?

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter. All parties were given the opportunity to present documentary evidence.

2. (Findings 2 through 14 are from the parties' Joint Agreed Statement of Facts filed with this Board on April 4, 2001). During the calendar years 1992 and 1993, MMBP was, and since such time, has continually operated as a "health service corporation" as defined by Section 33-30-101 (1) MCA. In that it was, and is, a nonprofit corporation for the purposes of establishing and operating a nonprofit plan or plans under which prepaid hospital care, medical-surgical

care, and other health care and services, or reimbursement therefore, may be furnished to a member or beneficiary.

3. Pursuant to Section 33-30-203, MCA, health service corporations such as MMBP, were, during calendar years 1992 and 1993, and under said statute continue to be, exempt from the premium tax otherwise applicable to insurance companies.

4. MMBP voluntarily filed 1992 and 1993 Montana corporate license tax returns, each year paying the minimum tax of \$50.

5. MMBP's 1992 and 1993 federal tax returns were audited by the Internal Revenue Service (IRS). The IRS forwarded the results of these audits to DOR in the form of a Revenue Agent's Report (RAR).

6. In response to the RAR, the DOR adjusted MMBP's 1992 and 1993 tax liability and assessed a total of \$19,029 in Montana corporation license tax against MMBP.

7. MMBP then timely appealed the assessments to the Director of the DOR, which also upheld the assessments.

8. MMBP then timely appealed the assessments to the State Tax Appeal Board.

9. MMBP is one of three health service corporations authorized to do business in Montana.

10. Section 15-31-101 (3), MCA, states in pertinent part:

"Except as provided in 15-31-103 or 33-2-705(4) or as may be specifically provided, every corporation engaged in business in the state of Montana shall annually pay to the state treasurer a license fee for the privilege of carrying on business in this state the percentage or percentages of its total net income for the proceeding taxable year at the rate set forth in this chapter.

11. Section 15-31-113 (3), MCA, states in pertinent part: "A corporation is not exempt from the corporation license tax unless specifically provided for under 15-31-101 (3) or 15-31-102."

12. 42.23.103 (2) ARM, defines what documents must be submitted by an organization before it may be exempt from payment of Montana corporate license taxes.

13. MMBP did not file for tax exemption under 42.23.103 (2) ARM, in 1992, 1993, or any subsequent year.

14. Section 15-31-102, MCA, lists those organizations exempt from taxation under Section 15-31-101 (3). Health service corporations are not listed among those organizations exempted from taxation under 15-31-102, MCA.

MMBP'S CONTENTIONS

Mr. Ramlow stressed that this matter involves only questions of interpretation of law.

MMBP is a special form of corporation under Montana law called a "health service corporation." Health service corporations are authorized by the Montana code in Title 33,

Chapter 30 and, as such, they have a special legislative background and a special function among the forms of non-profit corporations that exist in Montana. By definition, a health service corporation establishes and operates non-profit plans under which prepaid hospital care, medical-surgical care and other forms of health care and services, or reimbursement for those services, can be furnished to a member of a beneficiary of that health service corporation. A health service organization has its own special statutory category: Section 33-30-101 (1), MCA, which defines a health service corporation as:

A nonprofit corporation organized or operating for the purpose of establishing and operating a nonprofit plan or plans under which prepaid hospital care, medical-surgical care, and other health care and services, or reimbursement therefore, may be furnished to a member of beneficiary.

Section 33-30-203, MCA, provides that health service corporations are exempt from premium taxes on premiums collected from their members or beneficiaries:

A health service corporation is exempt from all premium taxes.

Section 30-30-102 (2), MCA, provides a guide to construction of Montana law applicable to health service corporations:

(2) A law of this state other than the provisions of this chapter applicable to health service corporations must be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict the provisions of this chapter prevail.

Insurers doing business in Montana are regulated by Title 33 of the Montana statutes, entitled by Section 33-30-101, MCA, as the "Montana Insurance Code." Section 33-1-201 (6) of the Montana Insurance Code defines the term "insurer" as:

Every person engaged as an indemnitor, surety, or contractor in the business of entering into contracts of insurance. The term also includes a health service corporation in the provisions listed in 33-30-102.

Section 33-30-201 (5) (a) of the Code defines "insurance" as:

a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

Section 33-2-707, MCA, generally exempts insurers from all forms of taxation, except as specifically levied by the Montana legislature in the Montana Insurance Code:

The state of Montana hereby preempts the field of imposing excise, privilege, franchise, income, license and similar taxes, licenses, and fees upon insurers and their general insurance producers and insurance producers as such and on the intangible property of insurers or such insurance producers. No county, city, municipality, district, school district, or other political subdivision or agency in Montana shall

levy upon insurers, or upon their general insurance producers and insurance producers as such, any such tax, license, or fee additional to such as are levied by the legislature of Montana in this code.

Section 15-31-101 (3), provides in part that:

Every corporation engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state the percentage or percentages of its total net income for the preceding taxable year at the rate set forth in this chapter.

MMBP is an insurer pursuant to Section 33-1-201 (6), MCA (. . . "The term [insurer] also includes a health service corporation in the provisions listed in 33-30-102) and no agency of the state of Montana may levy any Montana tax on an "Insurer" except as provided in the Montana Insurance Code. (Section 33-2-707, MCA).

For purposes of applying the tax provisions of the insurance code, any doubts as to meaning of terms must be resolved in favor of the taxpayer and against the DOR:

[W]hen a taxing statute is susceptible to two constructions, doubt should be resolved in the favor of the taxpayer. See *Anaconda Co. v. Department of Revenue* (1978), 178 Mont. 254, 258, 538 P.2d. Moreover, tax statutes are to be strictly construed against the taxing authority and in favor of the taxpayer. *Canbra Foods Ltd. V. Montana Department of Revenue* (1996) 278 Mont. 368, 373, 925 P.2d 855, 857-58. *Western Energy Co. v. State, Dept. of Revenue*, 1999 MT 289, 297 Mont. 55, 990 P.2d 767, 769.

As applied in this matter, any doubt whether a health service corporation fits the definition of an "insurer" as that term is used in Section 33-2-707 must be resolved in favor of the taxpayer, MMBP.

MMBP was not engaged in business within the meaning of Section 15-31-101 (3), MCA, and therefore not subject to the corporation license tax. Health service corporations do not fit the category of entities subject to corporation license tax. The only corporations subject to the Montana corporation license tax are those corporations "engaged in business" in Montana. The term "engaged in business" means: "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." (Section 15-31-102 (2), MCA. As a matter of statutory definition, health service corporations are not "engaged in business or activity for profit." Section 33-30-104, MCA, provides that "no group, association, or organization created for or engaged in business or activity for profit" may be a health service corporation." Therefore, a health service corporation is not "engaged in business" within the meaning of Section 15-31-101 (3), MCA.

Section 33-30-102 (2), MCA, provides that:

Any law of this state other than the provisions of this chapter must be construed in accordance with the fundamental nature of a health service

corporation, and in the event of a conflict the provisions of this chapter prevail.

The provision of Section 33-30-104, MCA, that no organization may be a health service corporation if it is "created for or engaged in business or activity for profit" is part of the "fundamental nature" of a health service corporation. Accordingly, Section 15-31-101 (3), MCA, providing for corporate license tax on "every corporation engaged in business" must be construed in accordance with the requirement that a health service corporation is not an organization that is created for or "engaged in business."

To the extent that Section 15-31-101 (3), MCA, might be construed otherwise, Section 33-30-104, MCA, controls because in the event of a conflict between any other provision of Montana law (such as the corporation license tax), the provisions of Title 33, chapter 30 "prevail" with respect to health service corporations. Health service corporations are not "engaged in business" and therefore are not subject to Montana corporate license tax. It was not necessary for the legislature to create a statutory exemption from corporation license tax for health service corporations because as a matter of their fundamental nature, health service corporations are not engaged in business and thus are not subject to the corporation license tax.

MMBP acknowledges that it did not file for an exemption from corporation license tax under the procedures set forth in ARM Section 42.23.103 (2) because there was no need to apply for exemption from a tax that by law could not apply to it.

Initially, MMBP filed income corporate license tax returns in 1992 and 1993 and paid the \$50 corporate license filing fee with those returns. Subsequently, the DOR issued assessments on 1992 and 1993 based upon its determination that the reports on those returns constituted taxable income. Initially, MMBP challenged the determination on the basis of exemption from taxation that existed under the Montana Insurance Code.

The definition of a corporation that is subject to corporate license tax is found in Section 15-31-101 (3), MCA, which says that the corporate license tax applies to corporations which are engaged in business. The term "engaged in business" is further defined by Section 15-31-101 (2), MCA, stating that a corporation is engaged in business if it is actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. The statutes governing health service corporations define a very special and unique purpose for health service corporations in Montana. Health service corporations, like other non-

profit corporations in Montana fall within the general provisions of Title 35, Chapter 2, a non-profit corporation act. The DOR has regulations that govern how non-profit corporations file for exemptions from Montana corporate license tax. MMBP has never filed for an exemption from Montana corporate license tax because, due to the special nature of health service corporations, the legislature contemplated that these corporations would never be subject to tax. The relevant statute is Section 33-30-104, MCA, which provides that no group, association or organization created for or engaged in business or activity for profit may be a health service corporation. The words used in Section 33-30-104, MCA, are almost a mirror of the words used in the tax statute, 15-31-101 (2), MCA, which says the kind of corporation that is engaged in business and the kind of activity that a corporation is involved in that would subject it to tax. By statutory definitions, health service corporations cannot be involved in any activity for profit, or engaged in any business. The taxpayer's contention is that MMBP is not subject to corporate license tax because, as a health service corporation, the income tax provisions of the Montana code do not apply. MMBP is not engaged in business.

MMBP questions how it is treated, for taxation purposes, with other health service corporations, specifically, New West and Blue Cross Blue Shield of Montana. MMBP "just wants a level playing field and just wants to know that everybody is being treated equally here." (James M. Ramlow, State Tax Appeal Board hearing, June 5, 2001). MMBP and the DOR engaged in limited discovery on this issue. The Board ordered the DOR to respond to this inquiry. MMBP's belief is that these other two health service organizations are not filing income tax returns for corporate license tax in Montana because the statute doesn't require it.

To the best of Mr. Ramlow's knowledge, no returns have been filed since 1993 and therefore no audits have occurred. Also, other health service corporations do not file corporate license returns.

Mr. Ramlow believes the Legislature did not intend for health service organizations to be taxed when they created this category: "I think that the Legislature must have concluded, for whatever reason, that it was important that companies like Blue Cross and Montana Medical not be subject to tax. Maybe it was because they felt like the structure established by that section of the code that they created when they created this whole category of health service

corporations was of such a benefit to society in general that rather than impose taxes on them they created this special class."

DOR'S CONTENTIONS

Ms. Crepeau countered that not all of Title 33 applies to health service corporations. Specifically, the section which creates the premiums tax and which exempts insurers from taxation of other forms does not apply to health service corporations. Health service corporations do not pay the premiums tax and the portions of Title 33 that relate to the premiums tax and limiting of taxation to that specific type of tax do not apply to health service corporations. Therefore, any argument made by MMBP that it should be exempt from corporate license taxation based upon Title 33 is without merit. Section 15-31-101 (3), MCA, governing corporate license taxation, applies to MMBP because it is a corporation doing business in Montana. Any such corporation, unless specifically exempt, is subject to taxation under that statute.

Section 33-30-104, MCA, provides that no for-profit organization may be a health service corporation:

No group, association, or organization created for, or engaged in business or activity for profit, provision for the incorporation of which is made by any of the corporation laws of this state, may be organized or operated, directly or

indirectly, as a health service corporation under this chapter.

That statute simply states that, if an entity is incorporated as a for-profit corporation under Montana statute, it may not be a health service organization. Contrary to the taxpayer's argument, it does not say that, if an organization is a non-profit organization, it is not subject to the corporate license tax set out in Title 15. MMBP is organized under Montana law as a non-profit corporate organization. It is not organized as a prohibited corporation under Title 33. Beyond that, the statute does not apply.

MMBP voluntarily filed corporate license tax returns. They voluntarily paid the minimum \$50 corporate license tax as required by law. The audit by the DOR was based on an IRS audit which indicated that MMBP had taxable earnings. MMBP is subject to the corporate license tax under 15-31-103 (3), MCA. A non-profit corporation is not a corporation that does not act for gain or pecuniary profit. The non-profit laws require that certain disbursements may not be made. However, it does not prevent a non-profit organization from making gains.

As it is exempt from the premiums tax under Title 33, if MMBP is not taxed as a corporation in Montana, under the

corporate license tax statute, it will be a non-taxed entity. This seems illogical because the statutes require taxes to be paid by other insurers, certainly under the premiums tax which MMBP is exempted from. Other corporations in the State are subject to corporate license tax unless specifically exempted. MMBP has never filed as a tax exempt entity. MMBP is subject to taxation under 15-31-101 (3), MCA, and the statute cited by MMBP in its reply brief (33-30-104) does not support its argument that it is a non-taxable corporate entity.

If the legislature had intended to exempt corporations such as MMBP from taxation, it would have been written in the statute. The legislature intended to exempt health service corporations from the premiums tax and did so in Section 33-30-203, MCA. There is no statute that exempts a health service corporation from corporate license tax.

BOARD'S DISCUSSION

Mr. Ramlow argued "The DOR can't agree that MMBP is a health service corporation and also argue that it's engaged in a business activity. That is an option the legislation just doesn't leave open to the DOR. And if it's not engaged in business activity, then the tax statute doesn't pick up this corporation as taxable under the Montana corporation license tax because, in order to be taxable, you have to be

engaged in business activity. So, it seems fairly plain to me that the legislature was aware of what triggered taxation of corporations under the Montana corporate license tax and specifically used language that mirrored that language in the license tax provisions in describing a form of corporation that was not engaged in those kinds of activities, could not engage in those kinds of activities. . ."

It is apparent to the Board, upon perusal of Section 33-30-104, MCA, which provides that no for-profit organization may be "organized or operated, directly or indirectly, as a health service corporation", that part of the fundamental nature of a health service corporation is that it does not and cannot, by statute, engage in business or activity for profit. Section 15-31-101 (3), MCA, provides that "every corporation engaged in business in the state of Montana" is subject to the corporation license tax, which is a percentage of total net income for the preceding taxable year. . . ." By definition and statutory mandate, a health service corporation cannot be engaged in business activity for profit and still be considered a health service corporation.

The Board therefore concludes that MMBP is not subject to the corporate license tax under Section 15-31-101 (3), MCA. As a matter of statutory definition, health service

corporations are not "engaged in business or activity for profit."

The Board finds the MMBP's inquiries regarding the tax status of the other two Montana health service corporations to be moot in light of its finding that MMBP is not subject to the Montana corporate license tax.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-302, MCA.**

2. **§33-30-104, MCA. No profit organization may be a health service corporation.**

3. The taxpayer is NOT subject to Montana corporate license tax under **Section 15-30-101 (3), MCA.**

4. The appeal of the taxpayer is hereby granted and the decision of the Department of Revenue is reversed.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the Department of Revenue shall set aside its assessment of corporation license tax for the calendar years 1992 and 1993.

Dated this 19th day of June, 2001.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JERE ANN NELSON, Member

LARRY L. BROWN, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of June, 2001, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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