

FILED

JAN 18 2017

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

**COMMISSIONER OF INSURANCE
STATE OF KANSAS**

In the Matter of)
)
AGCS MARINE)
INSURANCE COMPANY)
NAIC #22837)

Docket No.: 4950--SO

SUMMARY ORDER

(Pursuant to K.S.A. 40-252, K.S.A. 40-2806, K.S.A. 79-2968,
and K.S.A. 77-501 *et seq.*)

Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 40-252 and in accordance with K.S.A. 2015 Supp. 77-537, the Commissioner orders that AGGS Marine Insurance Company (“AGGS”) pay premium tax owed with interest and pay a penalty. This Summary Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period, if no request for a hearing is made, pursuant to K.S.A. 77-542.

Findings of Fact

The Commissioner has been shown the following facts:

1. AGCS is located at 225 W. Washington Street, Suite 1800. Chicago, IL 60606.
2. AGCS has been authorized to transact and has continuously transacted insurance business in the State of Kansas since June 28, 1983.
3. On February 29, 2016, AGCS submitted its 2015 tax remittance statement which reflected \$72,453.79 as the total tax due. AGCS paid that amount.
4. KID’s audit of the return indicated that additional retaliatory tax in the amount of \$41,424.78 was due.

5. KID sent invoices to AGCS for payment of the additional tax on June 2, 2016 and on July 7, 2016.
6. AGCS has not challenged that the additional tax is due and owing and has not paid it.

Applicable Law

7. K. S.A. 40-252 states, in part:

Every insurance company or fraternal benefit society organized under the laws of this state or doing business in this state shall pay to the commissioner of insurance fees and taxes specified in the following schedule:

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*Insurance companies organized under the laws
of any other state, territory or country:*

1. Capital stock insurance companies and mutual legal reserve life insurance companies:

Filing application for sale of stock or certificates of indebtedness . . . \$25

Admission fees:

Examination of charter and other documents 500

Filing annual statement 100

Certificate of authority 10

Annual fees:

Filing annual statement 100

Continuation of certificate of authority 10

In addition to the above fees all such companies shall pay \$5 for each agent certified by the company, except as otherwise provided by law.

As a condition precedent to the continuation of the certificate of authority, provided in this code, every company organized under the laws of any other state of the United States or of any foreign country shall pay a tax upon all premiums received during the preceding year at the rate of 2% per annum.

In the computation of the gross premiums all such companies shall be entitled to deduct any premiums returned on account of cancellations,

including funds accepted before January 1, 1997, and declared and taxed as annuity premiums which, on or after January 1, 1997, are withdrawn before application to the purchase of annuities, dividends returned to policyholders and all premiums received for reinsurance from any other company authorized to do business in this state and premiums received in connection with the funding of a pension, deferred compensation, annuity or profit-sharing plan qualified or exempt under sections 401, 403, 404, 408, 457 or 501 of the United States internal revenue code of 1986. Funds received by life insurers for the purchase of annuity contracts and funds applied by life insurers to the purchase of annuities shall not be deemed taxable premiums or be subject to tax under this section for tax years commencing on or after January 1, 1997.

1. Mutual life, accident and health associations:

Admission fees:

Examination of charter and other documents \$500

Filing annual statement 100

Certificate of authority 10

Annual fees:

Filing annual statement 100

Continuation of certificate of authority 10

In addition to the above fees, every such company organized under the laws of any other state of the United States shall pay \$5 for each agent certified by the company, and shall pay a tax annually upon all premiums received at the rate of 2% per annum.

In the computation of the gross premiums all such companies shall be entitled to deduct any premiums returned on account of cancellations, including funds accepted before January 1, 1997, and declared and taxed as annuity premiums which, on or after January 1, 1997, are withdrawn before application to the purchase of annuities, dividends returned to policyholders and all premiums received for reinsurance from any other company authorized to do business in this state and premiums received in connection with the funding of a pension, deferred compensation, annuity or profit-sharing plan qualified or exempt under sections 401, 403, 404, 408, 457 or 501 of the United States internal revenue code of 1986. Funds received by life insurers for the purchase of annuity contracts and funds

applied by life insurers to the purchase of annuities shall not be deemed taxable premiums or be subject to tax under this section for tax years commencing on or after January 1, 1997.

2. Mutual fire, casualty and multiple line insurers and reciprocal or interinsurance exchanges:

Admission fees:

Examination of charter and other documents and issuance of certificate of authority . . . \$500

Filing annual statement . . . 100

Certificate of authority . . . 10

Annual fees:

Filing annual statement . . . 100

Continuation of certificate of authority . . . 10

In addition to the above fees, every such company or association organized under the laws of any other state of the United States shall pay a fee of \$5 for each agent certified by the company and shall also pay a tax annually upon all premiums received at the rate of 2% per annum.

For tax years 1998 and thereafter, the annual tax shall be reduced by the "applicable percentage" of (1) any taxes paid on business in this state pursuant to the provisions of K.S.A. 75-1508, and amendments thereto, and (2) the amount of the firefighters relief tax credit determined by the commissioner of insurance. The amount of the firefighters relief tax credit for a company taxable under this subsection for the current tax year shall be determined by the commissioner of insurance by dividing (A) the total amount of taxes paid by all such companies on business in this state under K.S.A. 40-1701 to 40-1707, and amendments thereto, for tax year 1983 as then in effect, by (B) the total amount of taxes paid by all such companies on business in this state under K.S.A. 40-1703, and amendments thereto, for the tax year immediately preceding the current tax year, and by multiplying the result so obtained by (C) the amount of taxes paid by the company on business in this state under K.S.A. 40-1703, and amendments thereto, for the current tax year. The "applicable percentage" shall be as follows:

Tax Year	Applicable Percentage
1998	10%

1999	20%
2000	40%
2002	50%
2003	60%
2004	70%
2005	80%
2006	90%
2007 and thereafter	100%

In the computation of the gross premiums all such companies shall be entitled to deduct any premiums returned on account of cancellations, all premiums received for reinsurance from any other company authorized to do business in this state, and dividends returned to policyholders.

8. K.S.A. 40-2806(c) states:

(c) If any company which has failed to file a return or has filed an incorrect or insufficient return, and after notice from the commissioner refuses or neglects within twenty (20) days to file a proper return, or files a fraudulent return, the commissioner shall determine the income of such taxpayer according to the best information available and assess the tax together with a penalty of fifty percent of the unpaid balance of tax due plus interest at the rate prescribed by K.S.A. 79-2968(a) for each month from the date the tax was originally due to the date of payment.

9. K.S.A. 79-2968 states:

Except as otherwise specifically provided by law, whenever interest is charged under any law of this state upon any delinquent or unpaid taxes levied or imposed by the state of Kansas or any taxing subdivision thereof, or whenever interest is allowed under any law of this state upon any overpayment of taxes levied or imposed by the state of Kansas or any taxing subdivision thereof, the rate thereof shall be the underpayment rate per annum prescribed and determined under paragraph (2) of subsection (a) of section 6621, without regard to subsection (c) thereof, of the federal internal revenue code, as in effect on September 1, 1996, and which rate is in effect thereunder on July 1 of the year immediately preceding the calendar year for which the rate is being annually fixed hereunder, plus one percentage point, if computed annually. Beginning on January 1, 2012, the rate for property tax delinquencies or underpayments of \$10,000 or more shall be as provided for under this section or 10% per annum, whichever is greater.

In the event the interest rate prescribed under this section cannot be determined by reference to section 6621 of the federal internal revenue code, as in effect on September 1, 1996, the rate at which interest shall be collected on underpayments shall be the rate prescribed by K.S.A. 16-204, and amendments thereto, for interest on judgments for the applicable period.

10. 26 U.S.C. § 6621(a) (2) provides:

The underpayment rate established under this section shall be the sum of--

- (A) the Federal short-term rate determined under subsection (b), plus
- (B) 3 percentage points.

Applicable Public Policy

The purpose of this action is to effectuate the policy set forth in K.S.A. 40-252.

Conclusions of Law

Based upon the Findings of Fact enumerated in Paragraphs #1 through #6, the Applicable Law, and the Applicable Public Policy cited above, the Commissioner of Insurance finds as follows:

11. The Commissioner of Insurance has jurisdiction over AGCS and the subject matter of this proceeding and such proceeding is held in the public interest.
12. AGCS has violated K.S.A. 40-252 by failing to pay premium tax due in the amount of \$41,424.78.
13. Pursuant to K.S.A. 40-2806(c), AGCS owes a penalty in the amount of \$20,712.39.
14. Pursuant to K.S.A. 79-2968 and 26 U.S.C. § 6621(a) (2), AGCS owes interest on the unpaid tax in the amount of \$1,346.30.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE:

1. AGCS shall pay premium tax, penalty, and interest due for 2015 in the amount of \$63,483.48.

2. The Commissioner shall retain jurisdiction over this matter to issue any orders deemed necessary.

IT IS SO ORDERED THIS 18th DAY OF JANUARY, 2017 IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



Ken Selzer
Ken Selzer
Commissioner of Insurance
BY:

John Wine
John Wine
Assistant Commissioner

NOTICE OF RIGHTS

AGCS is entitled to a hearing pursuant to K.S.A. 77-537 and K.S.A. 77-542 of the Kansas Administrative Procedure Act. If AGCS desires a hearing, the company must file a written request for a hearing with:

Diane Minear, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

This request must be filed within fifteen (15) days from the date of service of this Order. If AGCS requests a hearing, the Kansas Insurance Department will notify the company of the time and place of the hearing and information on procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of the same.

If a hearing is not requested in the time and manner stated above, this Summary Order shall become effective as a Final Order, pursuant to K.S.A. 77-613(e).

CERTIFICATE OF SERVICE


The undersigned hereby certifies that she served the above and foregoing Summary Order and Notice of Rights on this 18th day of January, 2017, by causing the same to be deposited in the United States Mail, first-class postage prepaid or by email, addressed to the following:

Mr. William Scaldaferrri

President, AGCS Marine Insurance Company
225 W. Washington St., Ste. 1800
Chicago, IL 60606

and

Mr. Frank Aberts
frank.aberts@agcs.allanz.com
falberts@azoac.com



Susan Ellmaker
Staff Attorney