

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

<b>In the Matter of</b>	)	
	)	
<b>AMERICAN INSURANCE COMPANY</b>	)	<b>Docket No. 4951--SO</b>
	)	
<b>NAIC #21857</b>	)	

**CONSENT AGREEMENT AND FINAL ORDER**

(Pursuant to K.S.A. 40-253, K.S.A. 40-2806, K.S.A. 79-2968,  
and K.S.A. 77-501 *et seq.*)

Now on this 23<sup>rd</sup> day of August, 2017, the Kansas Insurance Department ("KID") and American Insurance Company ("American") come before the Commissioner for formal disposition of the above captioned matter. The parties submit this proposed Consent Agreement and Final Order for adoption, rejection, or modification.

KID and American wish to resolve this matter by entering into this Consent Agreement. American hereby waives any and all rights to further administrative adjudication or review of this matter, including any and all rights conferred upon it under K.S.A. 77-501 *et seq.*

This proposed Consent Order directs that American pay taxes due and owing and assesses a penalty and interest against American. This Order shall become effective as a Final Order, without further notice, when signed by the Commissioner or his designee and filed of record with the KID.

**Findings of Fact**

The Commissioner has been shown the following facts:

1. American is located at 777 San Marin Dr., Novato, CA 94998.

2. American has been authorized to transact and has continuously transacted insurance business in the State of Kansas since January 1, 1880.
3. On February 29, 2016, American submitted its 2015 tax remittance statement in which reflected \$1,068.30 as the total tax due. American paid that amount.
4. KID's audit of the return indicated that additional retaliatory tax in the amount of \$1,875.00 was due.
5. KID sent invoices to American for the additional tax on May 19, 2016, July 7, 2016, and August 12, 2016.
6. American has not challenged that the additional tax is due and owing and has not paid it.

**Applicable Law**

7. K.S.A. 40-253 provides:

Whenever the existing or future laws of any other state or country shall require from insurance companies or fraternal benefit societies organized under the laws of this state, applying to do business in such other state or country, any deposit of securities in such state or country for the protection of policyholders therein or any payment for taxes, fines, penalties, certificates of authority, licenses, fees, or compensation for examination, including taxes or fees based on fire premiums, greater than the amount required for such purpose from insurance companies or agents of other states by the then existing laws of this state, then, and in every case, all companies and agents of any such state or country, doing business in this state shall make the same deposit, for a like purpose, with the commissioner of insurance of this state, and pay to the commissioner of insurance for taxes, fines, penalties, certificates of authority, licenses, fees, or compensation for examination, including taxes or fees based on fire premiums, an amount equal to the amount of such charges and payments imposed by the laws of such other state or country upon the companies of this state and the agents thereof. The provisions of this section shall not apply to special purpose assessments or guaranty association assessments both under the laws of this state and under the laws of any other state or country, and any tax offset or credit for any such assessment shall, for purposes of this section, be treated as a tax

paid both under the laws of this state and under the laws of any other state or country.

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. 40-253.

Conclusions of Law

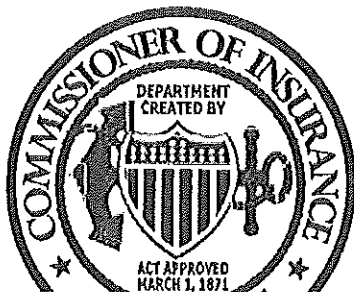
Based upon the Findings of Fact enumerated in Paragraphs #1 through #6, the Applicable Law, and the Applicable Public Policy cited above, the Commissioner of Insurance finds as follows:

11. The Commissioner of Insurance has jurisdiction over American and the subject matter of this proceeding and such proceeding is held in the public interest.
12. American has violated K.S.A. 40-253 by failing to pay retaliatory tax due in the amount of \$1,875.00.
13. Pursuant to K.S.A. 40-2806(c), American owes a penalty in the amount of \$937.50.
14. Pursuant to K.S.A. 79-2968 and 26 U.S.C. § 6621(a)(2), American owes interest on the unpaid tax in the amount of \$110.94.

**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE:**

1. As a result of the findings set forth above, American has paid premium tax due, penalty, and interest due for 2015 in the amount of \$2,923.44.
2. The Commissioner shall retain jurisdiction over this matter to issue any orders deemed necessary.

IT IS SO ORDERED THIS 23<sup>rd</sup> DAY OF <sup>August</sup> ~~MARCH~~, 2017 IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



Ken Selzer

Commissioner of Insurance

BY:



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~~John Wine Clark Shultz~~  
Assistant Commissioner

By:



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American Insurance Company