



Treatment of Deductible Reimbursement Payments to Insurance Corporations

This memorandum provides guidance about certain amounts received by an insurance corporation as reimbursements made by or on behalf of a policyholder for deductible amounts paid by the insurance corporation.

Background

In *Matter of American Zurich Insurance Company, et al.*, Division of Tax Appeals, October 14, 2010, DTA No. 882840, an Administrative Law Judge determined that amounts received or accrued by an insurance company from its insured policyholder as deductible reimbursements were not premiums for purposes of the tax on premiums under Tax Law section 1510(c)(1). The Tax Department did not seek review by the Tax Appeals Tribunal of this determination. Although the ALJ determination in this case is not precedential, the Tax Department, as a matter of policy, will give effect to this determination as more fully described in this memorandum. The Tax Department's issuance of its revised policy described in this memorandum is in concurrence with the [Department of Financial Services Insurance Circular Letter No. 5 \(2012\)](#) addressing that department's response to the determination in relation to the Insurance Law.

Deductible reimbursement amounts

For the time periods described below, the Tax Department will not treat amounts received as deductible reimbursements as premium for purposes of Tax Law section 1510(c)(1), under the following conditions:

- The deductible reimbursement amounts must be received or accrued by an insurance corporation from or on behalf of an insured policyholder pursuant to a contract of insurance containing a deductible provision and obligating the policyholder to repay the insurance corporation for payments made by the corporation that include some or all of the deductible amount.
- The insurance company must not have included a cost (or factor) to cover the premium tax as regards deductible reimbursement amounts in developing and calculating the amount of the premium charged to the insured policyholder, and the deductible reimbursement amounts cannot be treated for statutory accounting purposes as premium.

Tax periods covered by policy change

The Tax Department's policy as described above applies prospectively and to those tax periods for which the statute of limitations for issuance of a notice of deficiency under Tax Law Article 27, section 1081 is open.

For purposes of claims for refund or credit, the Tax Department's policy applies prospectively and to those tax periods covered by a claim for refund or credit that is filed with the Tax Department within the limitations period in Tax Law Article 27, section 1087.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.