

**BOARD OF TAX APPEALS  
STATE OF LOUISIANA**

**LOUISIANA HEALTH SERVICE  
& INDEMNITY COMPANY D/B/A  
BLUE CROSS/BLUE SHIELD OF  
LOUISIANA**

**PETITIONER**

**VERSUS**

**DOCKET NO. 9927D  
c/w 9985C**

**KIMBERLY ROBINSON, IN HER  
CAPACITY AS SECRETARY,  
LOUISIANA DEPARTMENT OF  
REVENUE, STATE OF LOUISIANA**

**RESPONDENT**

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**ORDER**  
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Before this Board is the Petitioner, Louisiana Health Service & Indemnity Company d/b/a Blue Cross/Blue Shield of Louisiana (“Blue Cross”) contesting the assessment by the Louisiana Department of Revenue and Taxation (the “Department”) of additional income tax due for the taxable years 2012, 2013 and 2014 (the “Tax Period”). The parties filed Cross Motions for Summary Judgment in this matter. This Board held the hearing on Blue Cross’s Motion for Summary Judgment held on July 14, 2021. Presiding at the hearing were: Judge Anthony “Tony” Graphia (Ret.), Chairman, Vice-Chairman Cade R. Cole, and Board Member Francis J. “Jay” Lobrano.<sup>1</sup> Subsequently, the Board held a

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<sup>1</sup> Following the hearing, Judge Tony Graphia’s term expired and he retired from the

hearing on the Department's Motion for Summary Judgment on May 4, 2022. Presiding at the second hearing were: Francis J. "Jay" Lobrano and Vice-Chairman Cade R. Cole.<sup>2</sup> Participating in the hearings were: William Backstrom, Jr., attorney for Blue Cross and Miranda Scroggins, attorney for the Department. After both hearings, both Motions for Summary Judgment were taken under advisement.

The Board now issues this Order in accordance with the written reasons attached herewith.

IT IS ORDERED AND DECREED that the Motion for Summary Judgment filed by Petitioner Blue Cross be GRANTED IN PART AND DENIED IN PART, and that the Motion for Summary Judgment filed by the Department be GRANTED IN PART AND DENIED IN PART.

IT IS FURTHER ORDERED AND DECREED that on or before August 12, 2022, the parties shall submit a proposed Judgment conforming to the Written Reasons attached herewith, and that this proposed Judgment shall contain and state the correct dollar amounts in accordance with the Written Reasons attached herewith.

IT IS FURTHER ORDERED AND DECREED that if Blue Cross and the Department cannot agree on the form of a proposed Judgment, then each party shall submit a proposed Judgment together with a Memorandum in support thereof on or before August 12, 2022. Each

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Board, and thus is not participating in the rendering of this Order with Written Reasons.

<sup>2</sup> Judge Lisa Woodruff-White (Ret.) was present for the second hearing but takes no part in this decision as she was not appointed to the Board when the initial hearing occurred.

party shall be permitted to reply to the other party's proposed Judgment and accompanying memorandum on or before August 19, 2022.

This is not a final Judgment and does not constitute an appealable Judgment as contemplated by La. R.S. 47:1410 and La. R.S. 47:1434.

Thus signed in Baton Rouge, Louisiana, this 14<sup>th</sup> day of July, 2022.

For the Board:

A handwritten signature in blue ink, appearing to read "FJL".

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Francis J. "Jay" Lobrano  
Chairman, Louisiana Board of Tax Appeals

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**RESPONDENT**

\*\*\*\*\*  
**WRITTEN REASONS**  
\*\*\*\*\*

Before this Board is the Petitioner, Louisiana Health Service & Indemnity Company d/b/a Blue Cross/Blue Shield of Louisiana (“Blue Cross”) contesting the assessment by the Louisiana Department of Revenue and Taxation (the “Department”) of additional income tax due for the taxable years 2012, 2013 and 2014 (the “Tax Period”). While the Department’s original assessment contained several adjustments, the Department and Blue Cross have resolved all of the proposed adjustments and related issues except for two: (1) whether the income tax credit claimed by Blue Cross for the Louisiana Premium Tax imposed pursuant to La. R.S. 22:842 (“Premium Tax”) includes the credits against the Premium Tax for investment in qualifying Louisiana investments

under La. R.S. 22:832; and (2) whether Blue Cross may seek an increase in the income tax credit resulting from its error in under-reporting the amount of municipal Premium Tax on its income tax returns and Premium Tax returns for the Tax Period.<sup>1</sup> Blue Cross filed a Motion for Summary Judgment on the income/ Premium Tax credit, which was subsequently followed by the Department's Motion for Summary Judgment on that same issue, plus the Department's Motion for Summary Judgment claiming that Blue Cross is procedurally barred from seeking an increase in the income tax credit due to an error in Blue Cross's calculation and reporting of the municipal Premium Tax paid by it for the Tax Period. In its Reply to the Department's Motion for Summary Judgment, Blue Cross incorporated a Motion to Strike several enumerated provisions in both the Affidavit of Danielle Palmer, which was attached to the Department's Motion for Summary Judgment, together with certain of the Department's statements included in the Department's Statement of Uncontested Material Facts. This Board held hearings on both motions, the first being the hearing on Blue Cross's Motion for Summary Judgment held on July 14, 2021, and the second being the hearing on the Department's Motion for Summary Judgment and Blue Cross's Motion to Strike on May 4, 2022. Participating in the hearings were: William Backstrom, Jr., attorney for Blue Cross and

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<sup>1</sup> See Consolidated Joint Stipulation for Facts, Paragraphs 7-10. We note that Blue Cross is seeking the increase in the municipal tax credit for the first time in its Motion for Summary Judgment. The Department does not dispute nor has it refuted the increased amount of the municipal tax credit sought by Blue Cross, but instead argues that Blue Cross may not seek relief beyond the relief claimed in its Petition, and therefore the relief sought by Blue Cross is not properly before this Board.

Miranda Scroggins, attorney for the Department. After both hearings, both Motions for Summary Judgment and Blue Cross's Motion to Strike were taken under advisement.

## **BACKGROUND AND FACTS**

The primary issue in the parties' respective Motions for Summary Judgment is whether certain credits taken by Blue Cross pursuant to La. R.S. 22:832 against the Premium Tax should be treated as "any taxes, based on premiums, paid by it during the preceding twelve months, by virtue of any law of this state" pursuant to La. R.S. 47:227. In addition, the Department argues that Blue Cross is procedurally barred from seeking an increase in Blue Cross's Louisiana income tax credit resulting from Blue Cross's error in under-reporting the amount of its municipal Premium Tax credit. For the reasons that follow, we hold in favor of the Department with respect to the Premium Tax Credit allowed under La. R.S. 47:227, and hold in favor of Blue Cross with respect to its claim for an increase in its Louisiana income tax credit resulting from its claimed increase in the Municipal Premium Tax credit.

Since 1934, through and including the Tax Period, Blue Cross has been a certified mutual insurance company qualified to do business in the State of Louisiana ("State") and engaged in the business of issuing accident and health insurance plans to individuals, business and government customers in the State. As such, Blue Cross is subject to and pays the Premium Tax imposed by La. R.S. 22:831, *et seq.* The Premium Tax is a tax levied against insurance companies doing business in the

State and is based on the gross annual premiums collected by the insurer.

The Louisiana Commissioner of Insurance is responsible for the administration and collection of the Premium Tax. As it is undisputed that Blue Cross writes “health and accident insurance plans”, the Premium Tax specific to Blue Cross is imposed pursuant to La. R.S. 22:842, which provides in part as follows:

(A)(1). Upon the business of issuing life, accident, health, or service insurance policies, or other forms of contracts or obligations covering such risks, or issuing endowment policies on contracts, or other similar forms of contract obligations, the annual tax shall be one hundred forty dollars when the gross annual premiums are seven thousand dollars or less. When the gross annual premiums are more than seven thousand dollars, the amount of tax payable shall be increased to two hundred twenty-five dollars for each additional ten thousand dollars, or fraction thereof, of gross annual premiums. The business of issuing each of the kinds of insurance or contracts mentioned in this Section may be combined under one tax, and the amount of the tax shall be based on the combined gross annual premiums of all such businesses.

La. R.S. 22:832(A)(1) allows a credit against the Premium Tax for a “qualifying Louisiana Investment”<sup>2</sup>. During the Tax Period, La. R.S. 22:832(C) defined a “qualifying Louisiana investment” as:

(1) Certificates of deposit issued in Louisiana by any bank, savings and loan association, or savings bank any of which are operating in the state of Louisiana or a trust company operating in the state of Louisiana with a main office or one or more branches where the trust company holds such funds in trust and invests them in certificates of deposit issued by a bank, savings and loan association, or savings bank operating in the state of Louisiana with a main office or one or more branches.

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<sup>2</sup> Pursuant to La. R.S. 22:832(B), the amount of the credit is dependent on the ratio of qualifying Louisiana investments of the insurer over the total admitted assets of the insurer. It is undisputed that during the Tax Period, Blue Cross was entitled to a credit against its Premium Tax liability equal to the maximum allowed percentage (95%) of the “amount fixed by this Part”, which is generally the value of the qualifying Louisiana investment.

- (2) Bonds of this state or bonds of municipal, school, road, or levee districts, or other political subdivisions of this state or bonds approved for issue by the Louisiana State Bond Commission.
- (3) Mortgages on property located in this state.
- (4) Real property located in this state.
- (5) Policy loans to residents of Louisiana, or other loans to residents of this state, or to corporations domiciled in this state.
- (6) Common or preferred stock in corporations domiciled in this state.
- (7) Cash on deposit in an account in Louisiana in any bank or savings and loan association, or savings bank or trust company holding such funds in trust, operating in the state of Louisiana with a main office or one or more branches.

La. R.S. 47:227 grants a credit against the Louisiana income tax to any insurance company in an amount equal to “any taxes, based on premiums, paid by it [the insurance company] during the preceding twelve months, by virtue of any law of this state.” During the Tax Period, the following information was reported by Blue Cross on its Louisiana Corporate Income Tax Return and on the applicable Louisiana Premium Tax returns<sup>3</sup>:

Year	La. Income Tax Liability Before Premium Tax Credit	Premium Tax before Credits	Premium Tax Credit - Qualifying Louisiana Investments	Net Premium Tax Paid	Net Louisiana Income Tax Liability
2012	4,289,189	36,768,740	34,930,303	1,838,437	0
2013	6,825,287	39,073,415	37,119,744	1,953,671	0
2014	2,778,494	40,783,415	38,744,244	2,039,171	0

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<sup>3</sup> As the credit allowed under La. R.S. 47:227 is based on the previous year's Premium Tax, all information regarding the Premium Tax is based on Blue Cross's respective prior year's Premium Tax returns.

Upon the Department's review of Blue Cross's 2012-2014 Louisiana Corporate Income Tax Return (Form CIFT 620) ("Returns"), the Department proposed adjustments, followed by the assessments giving rise to this litigation, which significantly reduced the amounts reported on Line 3 of Page 1 of the Returns as "Total nonrefundable income tax credits", thus resulting in an increased tax liability for each of the years at issue. Specifically, the Department disagreed with Blue Cross's inclusion of the Premium Tax credit in its calculation of the income tax credit as computed under La. R.S. 47:227, and instead reduced the claimed income tax credit to an amount equal to the net Premium Tax paid by Blue Cross to the Commissioner of Insurance. In other words, the Department found that the credit under La. R.S. 47:227 is limited to the actual cash amount paid to the Commissioner of Insurance for the Premium Tax.

Blue Cross timely appealed the assessments, and argues that the credit as allowed by La. R.S. 47:227 includes the Premium Tax credit in the definition of "any taxes, based on premiums, paid by it [Blue Cross] during the preceding twelve months." In effect, Blue Cross's argument is that its investment in qualifying Louisiana investments is the functional equivalent of the payment of the actual Premium Tax. Thus, the primary issue presented before this Board is the narrow question of whether the credits against the Louisiana income tax under La. R.S. 47:227 includes credits taken by a taxpayer against the Premium Tax for investments in

qualifying Louisiana investments. For the reasons that follow, we hold that it does not.

## DISCUSSION

This matter arises in the context of a motion for summary judgment, a procedure favored by law and designed to secure the just, speedy, and inexpensive determination of legal actions. *La. C.C.P. art. 966(A)(2)*. Where the facts are undisputed and the matter presents a purely legal question, summary judgment is appropriate. *Bernard v. Ellis*, 2011-2377 (La. 7/2/12), 111 So. 3d 995, 1002 ("Interpretation of an insurance policy ordinarily involves a legal question that can be properly resolved by a motion for summary judgment."). Both Blue Cross and the Department submitted a comprehensive Consolidated Joint Stipulation of Facts that established no material facts are in dispute and that both parties agree that this matter presents a purely legal question, and therefore summary judgment is appropriate.

As previously stated, the primary issue that we are to determine is whether the allowed credits against the Premium Tax granted pursuant to La. R.S. 22:832(A)(1) constitute a payment of the Premium Tax, and thus by definition constitute a credit against the Louisiana income tax pursuant to La. R.S. 47:227. We note the lack of any jurisprudence addressing this issue, and therefore this issue is *res nova*.

With respect to the Premium Tax Credit issue, the Department simply argues that amounts invested in Louisiana pursuant to la. R.S. 22:832(A)(1) are not "taxes, based on premiums, paid" by Blue Cross.

With respect to the ability of Blue Cross to seek an increase in the municipal Premium Tax credit due to Blue Cross's error in reporting the same on its income tax returns, the Department argues that in effect, Blue Cross's claim for an increased municipal Premium Tax credit is a claim for refund, and therefore must follow the procedure set forth in La. R.S. 47:1625(A)(1), specifically that Blue Cross may seek relief before this Board on this issue only after the Department (1) has denied the refund claim; or (2) the passage of one year has occurred without the Department taking action with respect to the refund claim.

Blue Cross counters on the Premium Tax issue with the following arguments. First, Blue Cross argues that in 2007, Blue Cross filed an amended income tax return to increase the tax credit under La. R.S. 47:227 to include the Premium Tax Credit under La. R.S. 47:832(A)(1). In its original income tax return, Blue Cross reported the actual net Premium Tax paid to the Commissioner of Insurance. The Department reviewed the amended return, and allowed the refund resulting from the increased credit. Blue Cross subsequently filed amended returns for 2006, 2010, and 2011 seeking refunds resulting from increasing the claimed income tax credit for the Premium Tax Credit, with the result being that the Department approved all of the amended returns. While Blue Cross does not assert an estoppel argument that the Department is bound for the Tax Period based on its actions in previous years, it cites the Department's prior position as support for the correctness of Blue Cross's interpretation. In addition, Blue Cross argues that both the plain

language of La. R.S. 47:227 and the legislative intent of its enactment require that its interpretation on the Premium Tax Credit issue be upheld and the amounts allowed as a credit under La. R.S. 22:832(A)(1).

With respect to the Department's argument that Blue Cross's claim for an increase in the municipal Tax Premium credit is premature, Blue Cross argues that La. R.S. 47:1407 grants this Board the jurisdiction to consider its claim for an increase in the municipal Premium Tax credit.

***A. Is the Premium Tax Credit under La. R.S. 22:832(A)(1) a Payment of Tax by Blue Cross Based on Premiums within the Meaning of La. R.S. 47:227?***

We begin our analysis of this issue with the general principles of statutory construction. "Legislative intent is the fundamental question in all cases of statutory interpretation; rules of statutory construction are designed to ascertain and enforce the intent of the statute." *Theriot v. Midland Risk Ins. Co.*, 95-2895, p. 3 (La. 5/20/97), 694 So. 2d 184, 186 (citing *State v. Piazza*, 596 So. 2d 817 (La. 1992)). What a legislature wrote in the text of a statute itself is "the best evidence of the legislative intent or will." *State v. Williams*, 00-1725, p. 13 (La. 11/28/01), 800 So. 2d 790, 800. "A statutory provision should be construed with the remaining portions of the statute, but more importantly, all statutes on the same subject matter should be read together and interpreted as a whole." *Lindy Development, L.L.C. v. Degan*, 03-1078, p. 5 (La. App. 4 Cir. 4/21/04), 874 So. 2d 252, 255 (citing *First Nat. Bank v. City of New Orleans*, 555 So. 2d 1345 (La. 1990); *Smith v. Cajun Insulation, Inc.*, 392 So. 2d 398 (La. 1980)).

First and foremost, we find that the legislature's use of the terminology that an "insurance company shall be entitled to an offset against any tax incurred under this Chapter, in the amount of any taxes, based on premiums, **paid by it** during the preceding twelve months. . ." [emphasis added] means what it says; *i.e.*, that the credit requires a payment of tax based on premiums and cannot be stretched to include an investment of an insurance company's own funds in one of the investments enumerated in La. R.S. 22:832(C). A deposit of one's own cash in a Louisiana bank or the purchase of Louisiana immovable property is simply not the payment of a Premium Tax.

Second, to adopt Blue Cross's interpretation of La. R.S. 47:227 and its interaction with La. R.S. 22:832 is contrary to the implicit legislative intent in the enactment of La. R.S. 47:227. The granting of a credit against the income tax for taxes paid based on insurance premiums is clearly designed to avoid an insurance company from being subject to a combined income and Premium Tax liability in excess of the insurance company's state income tax liability without consideration of the income tax credit. Stated another way (and to state the obvious), without the credit allowed by La. R.S. 47:227, an insurance company would pay more overall combined tax to the State of Louisiana than an entity NOT subject to the Premium Tax. La. R.S. 22:832 grants a credit against the Premium Tax for certain enumerated investments in Louisiana. To allow the same credit for qualified Louisiana investments against the income tax would in effect grant Blue Cross a "double" credit for the same investment - one

against the Premium Tax and one against the income tax. Exemptions from taxation are strictly construed and must be clearly, unequivocally and affirmatively established. *Goudchaux/Maison Blanche, Inc. v. Broussard*, 590 So.2d 1159, 1161 (La. 1991). The case herein involves a tax credit rather than an exemption. However, irrespective of whether it is termed an exemption, deduction or credit, the taxpayer is relieved of a tax burden and, thus, we see no distinction. *Ethyl Corporation v. Collector of Revenue*, 351 So.2d 1290, 1293 (La. App. 1st Cir.1977), writ denied, 353 So.2d 1035 (La. 1978). As such, the credit claimed by Blue Cross must be clearly, unequivocally, and affirmatively established. We find that no such clear establishment of the credit sought by Blue Cross in La. R.S. 47:227

Blue Cross argues that any interpretation of La. R.S. 47:227 that limits the Premium Tax credit amount to the Premium Tax actually paid by an insurance company defeats the statutorily-pronounced purpose of the Premium Tax Credit and the related incentives for insurance companies making such qualifying investments in Louisiana. In so arguing, Blue Cross posits the following hypothetical to demonstrate how an insurance company is incentivized to make investments in Louisiana and how adopting the Department's position would lead to absurd results:

- (1) Assume Blue Cross's state income tax liability is \$100 before any offset and its gross premium tax liability is \$50 - with no qualifying investments in Louisiana. Under this scenario, Blue Cross would pay a net combined premium tax and income tax of \$100 (\$100 of income tax less \$50 credit for Premium Tax plus \$50 in Premium Tax).

(2) Assume the same facts as above but that instead Blue Cross makes qualifying Louisiana Investments in an amount sufficient to entitle it to the 95% Premium Tax Credit under La. R.S. 47:832. Under this scenario, and under the Department's position, Blue Cross would pay \$2.50 in Net Premium Tax (\$50 Gross Premium Tax less \$47.50 in Premium Tax Offset) plus \$97.50 in Louisiana income tax (\$100 gross income tax liability less \$2.50 in Premium Tax Credit), resulting in the same \$100 combined income and premium tax liability as example 1.

Blue Cross argues that in the above examples, it has received no benefit from making the qualifying Louisiana investments in that it has paid the same \$100 in combined premium and income tax liability - with or without the qualifying Louisiana investments, thus negating the stated purpose of the Premium Tax Credit under La. R.S. 22:832, and specifically La. R.S. 22:832(D).<sup>4</sup> However, the fatal flaw in Blue Cross's argument is that it assumes the effective rate of tax with respect to the income tax is greater than the effective rate of tax for the gross Premium Tax before consideration of the Premium Tax Credit under La. R.S. 22:832(A)(1). However, Blue Cross's actual figures for the Tax Period establish that this is not the case. For 2012, 2013 and 2014, Blue Cross reported Louisiana Taxable Income of \$54 million, \$85 million, and \$35 million (rounded) respectively. For the same periods, Blue Cross's rounded Louisiana income tax liabilities before the consideration of any Premium Tax Credit were \$4.2 million, \$6.8 million and \$2.7 million,

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<sup>4</sup> La. R.S. 22:832(D) provides:

Recognizing that it is in the public interest to create an incentive for environmentally clean industry to locate in this state and to broaden the economic base; to encourage investment in this state; and to enhance the economic and financial climate of the state, the legislature finds that a premium tax reduction for insurers investing in certain qualified Louisiana assets promotes the public interest.

respectively. Likewise, the rounded gross Premium Tax (Premium Tax before credits) for same years was \$37 million, \$39 million, and \$41 million respectively. The net Premium Tax for the same periods is 5% of each year's gross Premium Tax liabilities, or \$1.8 million, \$1.9 million and \$2 million (all rounded), respectively. Unlike the hypothetical posited by Blue Cross, the Premium Tax Credit (rounded) and resulting benefit to Blue Cross of making its qualifying Louisiana investments for each tax period was \$35 million, \$37 million, and \$39 million, respectively. Clearly, the economic reality is that over \$100 million in Premium Tax savings inured to Blue Cross over the Tax Period for making its qualifying Louisiana investments, and thus resoundingly comports with the stated purpose expressed in La. R.S. 22:832(D) of incentivizing insurance companies to invest in Louisiana. We further note that under the interpretation urged by Blue Cross, and given that the Premium Tax is a tax on the majority of Blue Cross's gross revenue, it is highly unlikely if not impossible that Blue Cross will ever pay any Louisiana income tax if allowed a credit against its Louisiana income tax for the credits against the Premium Tax for qualifying Louisiana investments.

Finally, in its reply to the Department's Motion for Summary Judgment, Blue Cross cites our recent decision of *Goodrich v. Kimberly Robinson, Secretary, Department of Revenue*, Louisiana Board of Tax Appeals, Docket No. 12332C (March 10, 2022). In that case, we held that the payment of amounts to a qualifying Scholarship Granting

Organization in lieu of Alabama income taxes constituted “taxes paid to another state”, and thus the taxpayers, who were Louisiana residents, were entitled to include both the amounts paid to the State of Alabama and the amounts paid to the Scholarship Granting Organization qualified as a Louisiana income tax credit under La. R.S. 47:33(A). In that case, we noted that our ruling was limited to its unique facts. Blue Cross attempts to liken the Premium Tax Credit to the “payment in lieu of taxes” made by the taxpayer in *Goodrich* to the Scholarship Granting Organization. However, there are fundamental differences between the credit claimed by Blue Cross in the instant case and the credit claimed by the taxpayer in *Goodrich*. First, the taxpayer in *Goodrich* made a payment in lieu of the Alabama income tax to the Scholarship Granting Organization, and thus forever parted with the funds. Blue Cross has not made a payment to any third party in lieu of the Premium Tax, but instead the Premium Tax Credit derives from the mere investment of Blue Cross’s own funds in Louisiana. Had La. R.S. 22:382 allowed for a credit against the Premium Tax for the payment of amounts to a charitable organization, the analysis would be similar to Blue Cross, in that the operational effect would be the payment of the tax. However, in the instant matter, the Premium Tax Credit reduces the Premium Tax merely because Blue Cross invested in qualifying Louisiana investments - and is clearly not for a payment to a third party in lieu of payment of the Premium Tax to the Commissioner of Insurance.

For the foregoing reasons, we agree with the Department and find that Blue Cross is not entitled to a Louisiana income tax credit for the 95% Premium Tax Credit.

***B. Is it within the Jurisdiction of this Board to Consider and Render Judgment with respect to Blue Cross's Claim for an Increased Municipal Premium Tax?***

The following background is helpful in considering this issue. At the time Blue Cross filed its Petition in this matter, there was no settled law on whether certain “taxes” on insurance premiums levied by municipalities were included in the definition of taxes paid based on premiums within the meaning of La. R.S. 47:227. However, since the filing of the petition, this Board rendered its judgment in *LUBA Casualty Insurance Company v. Secretary, Louisiana Department of Revenue*, Louisiana Board of Tax Appeals, Docket No, 9462D, c/w 9496D, 10214D, & 1116D (December 11, 2018), wherein we held that such municipal Premium Taxes were included in the definition of “taxes paid based on premiums” within the meaning of La. R.S. 47:227. In this matter, the Department’s original position was that Blue Cross was not entitled to a Louisiana income tax credit for these payments. However, since our ruling in *LUBA*, supra, the Department has acquiesced in this case and agreed to allow the income tax credits for the payment of municipal Premium Taxes by Blue Cross. However, after the filing of both its initial Louisiana Income Tax Return and ultimately, its Petition in this matter, Blue Cross discovered that it made an error in the calculation of its

municipal taxes paid during the Tax Period and, as a result, in its Motion for Summary Judgment, seeks an increase in the its income credit pursuant to La. R.S. 47:227. Blue Cross submitted competent summary judgment evidence in support of this claim. The Department does not appear to dispute the error, and in any event did not submit rebuttal evidence to the contrary, but instead argues that the claim is premature in that the Department has not officially denied the claim, and that Blue Cross is prohibited from making such claim during the pendency of these proceedings.

La. R.S. 47:1407 grants this Board broad authority over tax disputes. It provides in part:

The jurisdiction of the Board shall extend to the following:

- (1) All matters relating to appeals for the redetermination of assessments, the determination of overpayments, payment under protest petitions, or other matters within its jurisdiction, as provided in R.S. 47:1431 through 1438 or other applicable law .

On this basis, we agree with Blue Cross and grant it claim for an increase in its Louisiana income tax credit attributable to its corrected municipal Premium Taxes paid in each applicable year during the Tax Period. We note that the prescriptive period applicable to Blue Cross within which to seek the adjustment has been interrupted pursuant to La. R.S. 47:1623(F) by the filing of the instant litigation.

### **C. *Blue Cross's Motion to Strike***

In its reply brief to the Department's Motion for Summary Judgment, Blue Cross asserted a Motion to Strike certain paragraphs of

the affidavit of the Department's representative Danielle Palmer, and certain statements in the Departments Statement of Material Facts as being duplicative or inconsistent with the Consolidated Joint Stipulation of Facts. We note that in its brief, Blue Cross admitted that none of the statements that are the subject of Blue Cross's Motion to Strike create any genuine material issue of fact, and we agree. We therefore overrule Blue Cross's Motion to Strike.

Thus signed in Baton Rouge, Louisiana, this 14<sup>th</sup> day of July, 2022.

For the Board:



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Francis J. "Jay" Lobrano  
Chairman, Louisiana Board of Tax Appeals