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February 21, 1966

NO. 241

BULLETIN TO ALL MEMBERS

RE: Federal Tax

The attached explanation furnished by the firm of LeBoeuf, Lamb
and Leiby of New York City is for your guidance.


A. L. Lathrop
Manager

RECEIVED LAW OFFICES OF
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1966 FEB 21 11:08:35
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February 17, 1966

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**Re: FEDERAL EXCISE TAX ON FOREIGN INSURANCES
NET PREMIUMS**

In response to a request recently submitted to the Commissioner of Internal Revenue, the Excise Tax Branch has issued general advice with respect to the method of payment of the tax on foreign insurance policies under §4371 of the Internal Revenue Code as amended by §804 of the Excise Tax Reduction Act of 1965.

The following questions were submitted to the Commissioner and the following answers given thereto:

"I. Assume a policy of casualty insurance issued to ABC Corporation by a foreign insurer and, thus, subject to an excise tax of 4%. Assume that the premium at inception is \$100 and it is a flat or fixed premium paid to the foreign insurer. Assume further that the policy is cancelled within the first month and \$90 refunded to the insured. Is the tax 4% of \$100 or 4% of \$10 at the time the broker makes his monthly payment of tax?"

Answer: The tax is 4% of \$10.

'II. Assume the same set of facts as example I, but the policy is cancelled after two months and after the broker had paid the tax on the original \$100 premium. When the broker files his quarterly return, may he have a refund of the tax paid on the \$90 by crediting the return premium against premiums paid since the cancellation of the policy in question (thus, paying the tax on net premiums for the quarter)?'

Answer: When the broker files his quarterly return, he may take a credit for the tax paid on the \$90 against the tax due on other premiums paid during the period, or he may file a claim for refund on form 843 for the overpayment.

'III. Assume that under a direct policy or a reinsurance treaty written on an adjustable self rating basis issued by a foreign insurer or reinsurer, the broker is required to pay the tax on the provisional premium paid at the time he remits it to the foreign insurer or reinsurer. When the true premium is developed and it is less than the provisional premium and the broker refunds the excess premium to the insured or the reinsured company, may he obtain a refund of the tax paid on the excess premium by crediting the return premiums against other premiums subject to tax during the taxable period in question?'

Answer: Same answer as to question II.

'IV. With respect to deposit or provisional premium, must the tax be paid at the time the deposit or provisional premium paid is remitted to the foreign insurer or may the tax be paid when the premium is finally determined and remitted to the foreign reinsurer as under the current practice?'

Answer: You may secure a response to this question by submitting a request for ruling on a specific, actual transaction. Please identify the parties involved and furnish copies of all contracts of insurance, together with all other related documents so as to fully disclose all details of the transaction. Tentatively, however, we are inclined to feel there is doubt whether, under the amended law, the rule expressed in the MT cited by you, should continue to apply. "

We interpret the answers to Questions I, II and III to mean that the tax is payable on a net premiums basis and that refunds are now obtainable with respect to return premium on cancellations.

You will note that the Excise Tax Branch would not issue advice with respect to Question IV and a specific request for ruling will be submitted in the near future. With respect to deposit and provisional premiums, it would be our recommendation that you continue to handle those as you have under the law prior to January 1, 1966 and make the necessary adjustment on your returns if the

ruling alters the current practice.

While the Service would not issue a Revenue Ruling as such, we believe the advice they have issued may be relied upon by you.

LeBOEUF, LAMB & LEIBY

By


John J. Tarpey