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Letter Ruling 99-4: Lottery; Nexus

January 28, 1999

You request a ruling regarding ***** ("the Company") which maintains that it is not subject to withholding under Chapter 62B as applied to the proceeds of two Mass Millions Lottery prizes,^[1] the "rights" to which the Company bought from the bankruptcy estates^[2] of two Mass Millions winners.^[3] The Company contends that because it is neither an "individual" nor a corporate trust, it is not subject to income tax under Chapter 62 and thus it is not subject to withholding under Chapter 62B.

In addition, the Company argues that it is not subject to the corporate excise imposed under Chapter 63 since "insurance companies do not constitute domestic or foreign corporations." It also argues that it is not subject to the tax imposed on "foreign insurers" pursuant to Chapter 63 since "the assigned prize payments from the Commission are not gross premiums for insurance."

I. Ruling

The Company is not a foreign insurance company under Chapter 63. Therefore, the Company is not taxable as a foreign insurance company pursuant to Chapter 63.

Since the Company is not a foreign insurance company but is a foreign corporation, the nexus standards applicable to foreign corporations apply. The Company's purchase of the rights to receive Massachusetts Lottery proceeds and the receipt of such proceeds does not, without more, provide nexus with Massachusetts. Therefore, the Company is not taxable under Chapter 63 as a foreign corporation.

The withholding provisions of Chapter 62B apply to income that is subject to tax under Chapter 62. The Company is a foreign corporation and as such its income is not subject to Chapter 62. Therefore, the withholding provisions of Chapter 62B do not apply to the Lottery proceeds received by the Company.

II. Facts

1. The Company

You state that the Company is an "insurance company based in New York." The Company "does not conduct business in Massachusetts" and its "only contact with Massachusetts is the receipt of payments from the Massachusetts Lottery Commission."

2. Bankruptcy Estate

The Company states that ***** a resident of ***** won the Massachusetts Millions Lottery prize drawn in ***** 1990. ***** was subsequently forced into involuntary bankruptcy and "the lottery prize became part of the bankruptcy estate." The trustee of the bankruptcy estate became the "owner of rights to all future net payments due from Massachusetts through the Massachusetts Lottery Commission."

In 1994 the trustee entered into "an asset purchase agreement" with the Company "wherein the trustee agreed to sell the winning lottery prize to [the Company] for \$*****" [4] In ***** 1994 the U.S. Bankruptcy Court for the District of ***** "ordered that the sale constituted an 'appropriate judicial order, as that term is used in [G.L. c. 10, § 28][5]" According to the Company, the Lottery Commission "acknowledged this order" and directed that "all future payments due to ***** from the prize...be paid thereafter to" the taxpayer.

3. Bankruptcy Estate

The Company states that ***** and ***** were ***** residents who won a "Massachusetts Lottery Prize" of approximately \$***** sometime prior to 1996. They subsequently filed for bankruptcy and "as a result, their lottery prize became part of the bankruptcy estate." The trustee of the estate "became the owner of rights to all future net payments due from the Commonwealth...through the Lottery Commission, relative to the winning lottery prize."

The trustee entered into an "asset purchase agreement" with the taxpayer "wherein the trustee agreed to sell the winning lottery prize to [the Company] for \$*****." The United States Bankruptcy Court for the District of ***** on ***** 1996 issued an "Order Authorizing Trustee's Sale of the Estate's Interest in Lottery Winnings." [6] The Order states that it is "an 'appropriate judicial order' as that term is used in [G.L. c. 10, § 28]...." According to the Company, the Lottery Commission "acknowledged this Order and upon receipt of an assignment of the lottery prize from the trustee to the [Company] directed that all future payments due to the ***** from the prize won be paid thereafter to [the Company]."

III. Discussion

1. Insurance Company

The Company is not subject to Massachusetts taxation as a foreign insurance company. See G.L. c. 63, §§ 20, 21, 23 [7] and the Chapter 63 discussion, below. The Company does not do business in Massachusetts as an insurer, and the Lottery proceed payments are not "premiums." See generally id., and G.L. c. 63, § 20. The Company thus is not subject to the excise imposed on foreign insurance companies pursuant to Chapter 63.

2. Foreign Corporation

The Company is a corporation, association or organization established, organized or chartered under the laws of New York as an insurance company; as such, the taxpayer has privileges, powers, rights or immunities not possessed by individuals or partnerships. See generally G.L. c. 63, § 30. However, the taxpayer is not acting as an insurer in Massachusetts insofar as it purchases assets from bankruptcy estates that consist of rights to future Massachusetts Lottery proceeds. Such proceeds are not premiums. Because the taxpayer is generally acting in Massachusetts for the purposes for which domestic corporations may be organized, i.e., with the functions and attributes of a private for profit business corporation, it is a "foreign corporation" for the purposes of § 39. [8] See generally 830 CMR 63.39.1; Letter Ruling 91-2.

General Laws Chapter 63, § 39 imposes an excise upon all foreign corporations that enjoy under the laws of the commonwealth the powers, rights, privileges and immunities derived from the corporate form of existence and operation.

A foreign corporation is subject to the tax jurisdiction of Massachusetts under G.L. c. 63, § 39 if it: 1) is qualified to do business in Massachusetts,[\[9\]](#) or 2) actually is doing business in Massachusetts, or 3) exercises or continues its charter in Massachusetts,[\[10\]](#) or 4) owns or uses any part or all of its capital, plant or other property in the commonwealth in a corporate capacity. Id.

A foreign corporation is "doing business" in Massachusetts if it buys, sells or procures services[\[11\]](#) or property in Massachusetts; or executes contracts in Massachusetts; or exercises or enforces contract rights in Massachusetts;[\[12\]](#) or maintains a place of business in Massachusetts; or employs labor in Massachusetts. [\[13\]](#)

Buying or procuring property for the purposes of G.L. c. 63, § 39 includes the buying or procuring of intangible and tangible property. See generally Directive 96-2, Letter Ruling 91-2. In this case, the taxpayer has bought the intangible rights to future Massachusetts Lottery prize proceeds. However, the nexus regulation, 830 CMR 63.39.1, provides certain exceptions for foreign corporations whose activities in Massachusetts are limited to the purchase of financial instruments or the maintenance of investment accounts. Specifically, under 830 CMR 39.1(6)(d) a foreign corporation may own financial instruments issued by a Massachusetts corporation without subjecting itself to Massachusetts' tax jurisdiction. Similarly, under 830 CMR 63.39.1(6)(e), a foreign corporation may maintain an investment account with a Massachusetts financial institution without creating nexus with Massachusetts. We view the Company's purchases of rights to receive Lottery proceeds on the scale at which it is conducted as akin to these transactions. Thus, under the principles employed in the regulation, the Company is not doing business in Massachusetts by reason of its purchases of the rights to receive the two Lottery prizes.

In addition to the "doing business" standard, a foreign corporation is subject to tax under G.L. c. 63, § 39 if it owns or uses any part or all of its capital, plant or other property in Massachusetts in a corporate capacity. It might appear that by purchasing the rights to receive Massachusetts Lottery proceeds, the Company employs its capital and owns property in Massachusetts. However, the activity of the Company with regard to this property is limited in extent and purpose and thus such assets are neither owned or used in Massachusetts so as to subject the Company to the excise imposed under § 39. See Letter Rulings 91-6, 97-2; and Directive 96-2. In addition, under the principles of the nexus regulation discussed above, such activity on this scale falls outside the scope of the jurisdiction asserted by the regulation. Thus, the Company is not subject to the corporate excise based on its ownership or use of capital, plant or other property in Massachusetts.

Note that this nexus determination is based in part on the limited scale of the Company's purchases of Lottery prizes in Massachusetts. A different result might apply to a foreign corporation that purchases Lottery prizes or other rights to receive income on a substantial number of occasions or as a substantial part of its business activities.

3. Withholding

The withholding requirements of Chapter 62B apply only to income that is subject to the personal income tax under Chapter 62. See G.L. c. 62B, § 2. Resident and nonresident "natural persons," and corporate trusts, are subject to income tax under Chapter 62. See G.L. c. 62, §§ 1, 3, 4. The taxpayer is neither a natural person nor a corporate trust and therefore Lottery proceed payments made to the Company are not subject to tax under Chapter 62. Because such payments are not subject to Chapter 62, they are not subject to withholding under Chapter 62B. See G.L. c. 62B, § 2.

Very truly yours,

/s/Bernard F. Crowley, Jr.

Bernard F. Crowley, Jr.
Acting Commissioner Revenue

BFC:DMS:kt

LR 99-4

[1] The Mass Millions lottery prize is "payable in 20 equal payments over a period of 20 years." 961 CMR 2.54(6).

[2] This ruling assumes that any Lottery proceeds received by the trustees of the winners' bankruptcy estates prior to the sale to the Company were subject to tax under Chapter 62. The ruling also assumes that the sale to the Company of the rights to the Lottery proceeds was a taxable event for which all appropriate taxes have been paid to the extent required under applicable law. See G.L. c. 62, §§ 13, 25; Letter Ruling 81-21.

[3] The Massachusetts State Lottery was established by St. 1971 c. 813, which also created the State Lottery Commission in the Office of the State Treasurer. The "state lottery law" is found at G.L. c. 10, §§ 22 to 35, 37 to 40 and 56 to 58.

[4] The original amount of ***** Mass Millions Lottery prize was \$***** million.

[5] General Laws Chapter 10, § 28 states in pertinent part that "[n]o right of any person to a prize shall be assignable...except that any person pursuant to an appropriate judicial order may be paid the prize to which the winner is entitled...."

[6] The Order stated that the sale was sought by the trustee to sell "all the estate's right, title and interest in and to certain lottery winnings, which consist of nine (9) annual payments in the gross pre-tax amount of approximately \$***** each, more or less, to be made to the estate by the Massachusetts State Lottery Commission....The Commission is hereby directed, upon receipt of notice from the Trustee that the [Company] has consummated the purchase of the remaining payments, to pay the remaining payments to which the estate is entitled...to the [Company]...."

[7] "Every foreign insurance company coming within the scope of the definition of [G.L. c. 175, § 1]... shall annually pay an excise upon...gross premiums...."

[8] See also the definition of "corporate form": "A form of organization recognized in Massachusetts as that of a foreign corporation under G.L. c. 63, § 30(2), whether or not the entity is described as a corporation by the state under whose laws the entity is organized." 830 CMR 63.39.1(2).

[9] This ruling assumes that the taxpayer has not qualified to do business in Massachusetts.

[10] This ruling assumes that the taxpayer is not exercising or continuing its charter in Massachusetts merely by purchasing two Lottery prizes and receiving the proceeds. See 830 CMR 63.39.1(4).

[11] Buying or procuring services for the purposes of G.L. c. 63, § 39 refers generally to obtaining the services or agents or employees who are not independent contractors, from another person such as a personnel service, by a taxpayer. See Letter Ruling 91-6, fn.2. The Company has not bought or procured services in Massachusetts.

[12] The Company does not appear to have a "contract" with the Lottery Commission with respect to the Lottery proceeds. See generally 961 CMR 2.00 et seq. The taxpayer's purposeful activity with regard to other contracts or agreements executed in Massachusetts or to the enforcement of contract rights concerning the Lottery proceeds is de minimis. See generally Directive 96-2; Letter Ruling 97-2. Thus, the Company has not "executed a contract" in Massachusetts, or enforced "contract rights" in Massachusetts such that the taxpayer is "doing business" in the state.

[13] This ruling assumes the Company does not maintain a place of business in Massachusetts and does not employ labor in Massachusetts.