

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Allstate Life Insurance Company,	:	
Petitioner	:	
	:	
v.	:	No. 89 F.R. 1997
	:	
Commonwealth of Pennsylvania,	:	Argued: September 16, 2010
Respondent	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
 HONORABLE DAN PELLEGRINI, Judge
 HONORABLE RENÉE COHN JUBELIRER, Judge
 HONORABLE MARY HANNAH LEAVITT, Judge
 HONORABLE P. KEVIN BROBSON, Judge
 HONORABLE PATRICIA A. McCULLOUGH, Judge
 HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER**

FILED: October 15, 2010

The Commonwealth of Pennsylvania (Commonwealth), pursuant to Pa. R.A.P. 1571(i), filed Exceptions to this Court’s March 25, 2010, decision in Allstate Life Insurance Company v. Commonwealth, 992 A.2d 910 (Pa. Cmwlth. 2010) (en banc) (Allstate I), which addressed the correct methodology to be employed in calculating the amount of assessment tax credit to which an insurer providing annuities is entitled under Section 1711 of Article XVII of the Insurance Company Law of 1921

(Guaranty Act).¹ In Allstate I, this Court found that Section 1711 involves a complicated mathematical equation that limits the tax credit to a proportionate part of the assessments paid and interpreted the “proportionate part fraction” as follows: (1) the denominator of the proportionate part fraction is the total amount received on an involved assessment class, making the fraction a *separate* proportionate part factor for each account and sub-account; and (2) the numerator of the proportionate part fraction *includes* that portion of the premiums received on account of *annuity* policies. Therefore, this Court vacated the November 19, 1996 order (Resettlement Order) by the Board of Finance and Revenue (Board), which disallowed a tax credit with respect to Allstate Life Insurance Company’s (Allstate) 1992 assessments involving non-taxable annuities and the resulting resettlement, and remanded the

¹ Act of May 17, 1921, P.L. 682, as amended, added by Section 19 of the Act of December 18, 1992, P.L. 1519, 40 P.S. § 991.1711. This section provides in relevant part:

(a) A member insurer may offset against its premium tax liability to this Commonwealth a proportionate part of the assessments described in section 1707 to the extent of twenty per centum (20%) of the amount of such assessment for each of the five (5) calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

(b) The proportionate part of an assessment which may be offset against a member company's premium tax liability to the Commonwealth shall be determined according to a fraction of which *the denominator is the total premiums received by the company during the calendar year immediately preceding the year in which the assessment is paid and the numerator is that portion of the premiums received during such year on account of policies of life or health and accident insurance in which the premium rates are guaranteed during the continuance of the respective policies without a right exercisable by the company to increase said premium rates.*

40 P.S. § 991.1711(a)-(b) (emphasis added).

matter to the Board to recalculate Allstate's tax credit to offset against Allstate's 1993 Gross Premiums and Annuity Considerations Tax² liability in accordance with our interpretation of the proportionate part factor.

The Commonwealth's Exceptions essentially object to this Court's interpretation of Section 1711(b), which is that the numerator in the proportionate part fraction does include premiums received on account of annuity policies. This interpretation would result in a tax credit owed to Allstate.³ Specifically, the Commonwealth argues that the language in Section 1711(b) is clear and unambiguous and this Court erred in inserting the word "annuities" into the numerator of the proportionate part fraction, thereby "rewriting the statute." (Commonwealth Br. at 14.) The Commonwealth also asserts that the purpose of the Guaranty Act is to protect policy holders from insurance company failures, not to grant tax credits to insurers. Further, the Commonwealth contends that the history of the proportionate part fraction in relation to the premium tax supports a finding that no credit for annuities is statutorily authorized.

² The Insurance Premiums Tax, 72 P.S. § 7901 - 7906, is referred to as the "Gross Premiums Tax." The Act of August 4, 1991, No. 22, P.L. 97, amended the tax base to encompass life, accident, and health insurance premiums as well as taxable or non-qualified annuities for periods July 1, 1991 through December 31, 1995. During this time period, annuities held in pension funds or by governmental entities were deemed nontaxable or "qualified" annuities. The Act of June 30, 1995, No. 21, P.L. 139, removed taxable annuity considerations from the tax base for periods January 1, 1996 and thereafter. During the period of July 1, 1991 through 1995, the tax was referred to by the Department of Revenue as the "Annuity Considerations Tax."

³ We note that "the Commonwealth embraces this Court's holding that separate fractions are appropriate." (Commonwealth Br. at 12.)

We believe our en banc decision interpreting Section 1711(b) of the Guaranty Act, which was guided by the Supreme Court's decision in Northbrook Life Insurance Company v. Commonwealth, 597 Pa. 18, 20, 949 A.2d 333, 334 (2008), and the reading of the Guaranty Act as a whole, was proper. Accordingly, the Exceptions to Allstate I are overruled.

RENÉE COHN JUBELIRER, Judge

were made to broaden the credit provisions of the Guaranty Act to include credits for annuity assessments and eliminate the proportionate part fraction. Specifically, the first version of House Bill No. 1670, found at Printer's Bill No. 1967, completely eliminated the proportionate part fraction and replaced it with the following language:

Tax credits shall not be taken when an insurer has elected to include such assessments pursuant to a ratefiling as provided in section 1507(g).

This attempt to broaden the tax credit provision was rejected. A second version of the Bill, found at Printer's Bill No. 3225, again sought to replace the proportionate part fraction with the following language:

No offset against premium tax liability shall be permitted to the extent that a member insurer's rates or policyholder dividends have been adjusted as permitted in section 1507(g).

Again, this provision was struck down. In the end, the General Assembly reenacted the proportionate part fraction *exactly* as it was first enunciated in 1978, without any mention of annuities in the numerator of the fraction.

We may take judicial notice of the various versions of this bill that were proposed and rejected, *Pennsylvania School Boards Association, Inc. v. Commonwealth Association of School Administrators*, 696 A.2d 859, 863 (Pa. Cmwlth. 1997) (citing *League of Women Voters of Pennsylvania v. Commonwealth*, 683 A.2d 685, 687 n.3 (Pa. Cmwlth. 1996)), and it is clear from a review of these

provisions that the legislative intent was that annuity assessments should not be entitled to a tax credit.

For these reasons, I respectfully dissent.

DAN PELLEGRINI, JUDGE

President Judge Leadbetter and Judge McCullough join in this dissenting opinion.