

CLIENT ALERT

ASBCA Grants Summary Judgment in Favor of FEHBP Contractor on Audit Disallowance

Oct.30.2003

On October 29, 2003, the Armed Services Board of Contract Appeals granted partial summary judgment against the Office of Personnel Management's disallowance as an unallowable premium tax of Anthem Blue Cross Blue Shield's Ohio franchise taxes paid in years 1991 through 1995 and charged to an FEHBP contract. Blue Cross & Blue Shield Association, ASBCA No. 53632 (Oct. 29, 2003). Following a draft OPM OIG audit that questioned Anthem's method of allocating Ohio franchise taxes, the parties entered into a series of waivers extending the five-year limitations period for the issuance of a decision contained in the contract's Audit Disputes clause. The Board determined that the waiver did not preserve OPM's claim for years 1991 through 1993 because the waivers only addressed the allocability of the franchise taxes as raised in the draft audit report (an issue which BCBSA no longer disputes). OPM's challenge to the allowability of the franchise taxes was raised for the first time when the final audit report was issued in June 1999. The Board reasoned that "[a]llocability is not synonymous with allowability; it is merely one factor to be considered in determining allowability." Accordingly, the Board concluded that the waivers did not extend to the allowability of the franchise taxes, and OPM's claims related to the franchise taxes paid in years 1991 through 1993 were time-barred. The Board also denied OPM's motion for summary judgment that the Ohio franchise tax is an unallowable tax imposed directly or indirectly on premiums.

[See full decision](#)

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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