STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PREMIER GROUP INSURANCE COMPANY,

Petitioner,

vs. Case No. 12-0439

OFFICE OF INSURANCE REGULATION,

Respondent.

## RECOMMENDED ORDER

On May 22-23, 2012, and September 13, 2012, Administrative Law Judge Lisa Shearer Nelson of the Division of Administrative Hearings conducted a hearing pursuant to section 120.57(1), Florida Statutes, in Tallahassee, Florida.

## APPEARANCES

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For Respondent: Kenneth Tinkham, Esquire
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Office of Insurance Regulation
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## STATEMENT OF THE ISSUES

The issues to be resolved in this case are what amount of federal income tax expense is properly included as an expense in

Premier's excessive profits filings for the years 2005-2007, and in light of that deduction, how much Petitioner must refund as excessive profits pursuant to section 627.215, Florida Statutes (2009)?

## PRELIMINARY STATEMENT

On March 19, 2010, the Office issued a Notice of Intent to Issue Order to Return Excess Profits to Petitioner, Premier Group Insurance Company ("Premier" or "PGIC"). Premier challenged the intended agency action, and eventually, on January 13, 2012, filed an Amended Petition for Administrative Hearing Involving Disputed Issues of Fact with OIR. The Office referred the case to the Division of Administrative Hearings the same day, and the case was docketed as DOAH Case No. 12-0439 (hereinafter referred to as "the merits case"), which is the subject of this Recommended Order. The pivotal issue contested by the parties in the merits case is the Office's treatment of federal income taxes when determining the amount, if any, of excess profits pursuant to section 627.215.

The merits case was scheduled for hearing April 10-11, 2012. At the request of the parties, the case was continued because the parties advised that a Petition Challenging Agency Statements Defined as Rules had been filed with the Office and was going to be referred to DOAH, and that the cases should be consolidated

for hearing. Accordingly, the merits case was rescheduled for hearing on May 22-23, 2012.

On April 5, 2012, the Petition Challenging Agency Statements Defined as Rules was filed with the Division, and docketed as Case No. 12-1201RU (referred to herein as the unadopted rules case). On April 10, 2012, the cases were consolidated for hearing. The Order of Consolidation stated that the case would be heard May 22-23, as previously noticed in the merits case, unless the parties requested earlier dates.

The hearing on both cases began as scheduled. However, at the beginning of the hearing, the undersigned was notified that Petitioner had discovered a statute not previously contemplated by either party dealing with the allocation of federal income taxes for insurance companies. Because the potential application of this allocation method would materially affect the presentation of the merits case, it was agreed that the merits case would be continued and the unadopted rules case would proceed. It was also agreed that the record in the unadopted rules case would also be used for the merits case.

Prior to the May 22-23 hearing, the parties submitted a Joint Prehearing Stipulation containing stipulated facts that, to the extent that they are relevant to the merits case, are incorporated into the Findings of Fact below. At the May portion of the hearing, Petitioner presented the testimony of

Robert Prentiss, Esquire; James Watford; Raymond Neff; and Donnie Hunter. Respondent presented the testimony of Donnie Hunter and James Watford.

After the hearing, the cases were severed so that a final order could be issued in the unadopted rule challenge, and the merits case was continued until after the issuance of the final order unadopted rules case. The parties were directed to file a Joint Status Report no later than ten days after the issuance of a final order in the unadopted rules case, identifying how many days would be needed for hearing and several mutually acceptable dates for rescheduling a hearing on the merits case, should one be necessary.

On July 5, 2012, a Final Order was issued in Case No. 12-1201, finding that the Office's policy regarding the inability to deduct federal income taxes as an expense for excess profits filings met the definition of a rule and had not been adopted as a rule in violation of section 120.54(a). That same day, an Order was issued directing the parties to file a Joint Status Report no later than July 16, 2012. An Order Re-Scheduling Hearing set the final day of hearing for September 13, 2012. The parties filed a Revised Joint Pre-Hearing Statement on September 11, 2012, and the hearing commenced as scheduled.

At the September 13 hearing, Petitioner presented the testimony of Donnie Hester and Raymond Neff. Respondent

presented the testimony of Mr. Hester and James Watford. During the course of all three days of hearing, Joint Exhibits 1-24; Petitioner's Exhibits 1-5, 10, 12, 14, and 20-46; and Respondent's Exhibits 1, 2, 4, 10-12, 15-23, 25, 34, 36, and 47-51 were admitted into evidence. Respondent's Exhibits 43 and 44 were proffered.

A two-volume Transcript for May 22-23, 2012, was filed with the Division on June 4, 2012. A one-volume Transcript for September 13, 2012, was filed on October 1, 2012. At the request of the parties, the time for filing proposed recommended orders as extended to October 26, 2012. Both parties timely filed Proposed Recommended Orders that were carefully considered in the preparation of this Final Order.

## FINDINGS OF FACT

1. Premier is a foreign insurer authorized to write workers' compensation insurance in the State of Florida. As a workers' compensation insurer, Premier is subject to the jurisdiction of the Office. Premier began writing workers' compensation insurance coverage in Florida on January 1, 2005.

2. The Office is a subdivision of the Financial Services Commission responsible for the administration of the Insurance Code, including section 627.215.

3. Section 627.215(1)(a) requires that insurer groups writing workers' compensation insurance file with the Office on a

form prescribed by the Commission, the calendar-year earned premium; accident-year incurred losses and loss adjustment expenses; the administrative and selling expenses incurred in or allocated to Florida for the calendar year; and policyholder dividends applicable to the calendar year. Insurer groups writing types of insurance other than workers' compensation insurance are also governed by section 627.215. Its purpose is to determine whether insurers have realized an excessive profit and if so, to provide a mechanism for determining the profit and ordering its return to consumers.

4. Insurer groups are also required to file a schedule of Florida loss and loss adjustment experience for each of the three years prior to the most recent accident year. Section 627.215(2) provides that "[t]he incurred losses and loss adjustment expenses shall be valued as of December 31 of the first year following the latest accident year to be reported, developed to an ultimate basis, and at two 12-month intervals thereafter, each developed to an ultimate basis, so that a total of three evaluations will be provided for each accident year."

5. Section 627.215 contains definitions that are critical to understanding the method for determining excess profits. Those definitions are as follows:

a. "Underwriting gain or loss" is computed as follows: "the sum of the accident-year incurred losses and loss adjustment

expenses as of December 31 of the year, developed to an ultimate basis, plus the administrative and selling expenses incurred in the calendar year, plus policyholder dividends applicable to the calendar year, shall be subtracted from the calendar-year earned premium." § 627.215(4). While the sum of the accident-year losses and loss adjustment expenses are required by the statute to be developed to an ultimate basis, the administrative and selling expenses are not.

b. "Anticipated underwriting profit" means "the sum of the dollar amounts obtained by multiplying, for each rate filing of the insurer group in effect during such period, the earned premium applicable to such rate filing during such period by the percentage factor included in such rate filing for profit and contingencies, such percentage factor having been determined with due recognition to investment income from funds generated by Florida business, except that the anticipated underwriting profit . . . shall be calculated using a profit and contingencies factor that is not less than zero." § 627.215(8).

6. Section 627.215 requires that the underwriting gain or loss be compared to the anticipated underwriting profit, which, as previously stated, is tied to the applicable rate filing for the insurer. Rate filings represent a forecast of expected results, while the excess profits filing is based on actual expenses for the same timeframe.

7. The actual calculation for determining whether an insurer has reaped excess profits is included in section 627.215(7)(a):

> Beginning with the July 1, 1991, report for workers' compensation insurance, employer's liability insurance, and commercial casualty insurance, an excessive profit has been realized if the net aggregate underwriting gain for all these lines combined is greater than the net aggregate anticipated underwriting profit for these lines plus 5 percent of earned premiums for the 3 most recent calendar years for which data is filed under this section. . .

8. Should the Office determine, using this calculation, that an excess profit has been realized, the Office is required to order a return of those excess profits after affording the insurer group an opportunity for hearing pursuant to chapter 120.

9. OIR B1-15 (Form F) is a form that the Office has adopted in Florida Administrative Code Rule 69O-189.007, which was promulgated pursuant to the authority in section 627.215.

10. The information submitted by an insurer group on Form F is used by the Office to calculate the amount of excessive profits, if any, that a company has realized for the three calendar-accident years reported.

11. The terms "loss adjustment expenses," and "administrative and selling expenses," are not defined by statute. Nor are they defined in rule 69O-189.007 or the instructions for Form F.

12. Form F's first page includes section four, under which calendar-year administrative and selling expenses are listed. Section four has five subparts: A) commissions and brokerage expenses; B) other acquisition, field supervision, and collection expense; C) general expenses incurred; D) taxes, licenses, and fees incurred; and E) other expenses not included above.

13. No guidance is provided in section 627.215, in rule 60O-189.007, or in the instructions for Form F, to identify what expenses may properly be included in the Form F filing. There is no indication in any of these three sources, or in any other document identified by the Office, that identifies whether federal income taxes are to be included or excluded from expenses to be reported in a Form F filing. While the form clearly references taxes, licenses, and fees incurred under section 4(D), the instructions do not delineate what types of taxes, licenses, and fees should be included. The instructions simply state: "for each of the expenses in item 4, please provide an explanation of the methodology used in deriving the expenses, including supporting data."

14. On or about June 30, 2009, Premier filed its original Form F Filing with the Office pursuant to section 627.215 and rule 69O-189.007. Rule 69O-189.007 requires that a Form F be filed each year on or before July 1.

15. On March 19, 2010, the Office issued a Notice of Intent, directing Premier to return $7,673,945.00 in "excessive profits" pursuant to section 627.215. Premier filed a petition challenging the Office's determination with respect to the amount to be refunded, based in part on its position that federal income tax expense is appropriately included as an expense for calculation of excess profits.

16. The parties attempted to resolve their differences over the next year or so. As part of their exchange of information, Premier subsequently filed three amendments to its Form F filing on December 11, 2009; on June 21, 2010; and on January 13, 2012. In each of its amended filings, Premier included the federal income tax expense attributable to underwriting profit it earned during the 2005-2007 period. These expenses were included under section 4(E).

17. As reflected in the Preliminary Statement, Premier filed a challenge to the Office's policy of not allowing federal income taxes to be used as an expense for excess profits filings as an unadopted rule. On July 5, 2012, a Final Order was issued in Case No. 12-1201, finding that the Office's Policy regarding the inability to deduct federal income taxes as an expense for excess profits filings met the definition of a rule and had not been adopted as a rule, in violation of section 120.54(a). The Final Order in Case No. 12-1201 directed the Office to

discontinue immediately all reliance upon the statement or any substantially similar statement as a basis for agency action.

18. At this point, the parties have resolved their differences with respect to all of the calculations related to the determination of excess profits, with one exception. The sole issue remaining is the amount, if any, that should be deducted as an administrative expense for payment of federal income tax.

19. The parties have also stipulated that, before any adjustment to federal income tax is made, Premier's underwriting profit for 2005 was $2,923,157 and for 2006 was $2,119,115. For 2008, Premier suffered an underwriting loss of $785,170.

20. Premier's federal income tax rate for all three years was 35%.

21. The maximum amount of underwriting profit that a company can retain is the net aggregate anticipated profit, plus five percent of earned premiums for the calendar years reported on workers' compensation business. For the 2005-2007 reporting years, Premier's maximum underwriting profit is stipulated to be $1,189,892. Anything over this amount is considered excessive profits which must be returned to policyholders.

22. The parties also agree that, prior to any deduction for federal income tax paid by Premier, the amount of excess profit

earned by Petitioner and subject to return to policyholders is $3,067,220.

23. Premier has filed a fourth amended Form F, which incorporated all of the stipulations of the parties to date. The fourth amended Form F also includes an allocation of federal income tax expense based upon the statutory allocation methodology outlined in section 220.151, Florida Statutes (2009).

24. Section 220.151 provides the statutory method for allocating federal income tax expenses for purpose of paying Florida corporate income taxes. This section directs that insurance companies shall allocate federal taxable income based on the ratio of direct written premium the insurance company has written in Florida for the relevant period, divided by the direct written premium anywhere.

25. Premier paid its Florida corporate income tax based upon this statutory methodology.

26. Consistent with the methodology in section 220.151, Premier allocated its federal taxable income to the State of Florida based upon the percentage of direct premium written on risks in Florida, and reduced the amount of its federal taxable income by the amount investment income reflected on its federal tax return. Premier then multiplied the Florida portion of its taxable income by its 35% federal tax rate, resulting in the federal income tax expense allocated to Florida.

27. For the year 2005, Premier's federal taxable income according to its tax return is $7,614,512.89. After subtracting investment income listed on the tax return of $969,051.97, the taxable income attributable to premium is $6,645,460.92.

28. For 2006, Premier's federal taxable income according to its tax return is $6,577,534.06. After subtracting investment income of $2,011,614.86, the taxable income attributable to premium is $4,565,919.20.

29. For 2007, Premier's federal taxable income according to its tax return was $4,359,742.88. After subtracting investment income of $2,266,291.99, the taxable income attributable to premium is $2,093,450.89.

30. For the three years combined, the federal taxable income was $18,551,789.83. The amount of investment income subtracted was $5,246,958.82, leaving a balance of taxable income attributable to premium as $13,304,831.01.

31. For the years 2005 through 2007, Premier paid $2,665,079.51; $2,302,136.92; and $1,525,910.01 respectively, in federal income tax.

32. During those same years, Premier wrote 58.8388%; 51.2514%; and 29.8536%, respectively, of its direct premium in Florida.

33. Allocating a portion of Premier's federal tax income and income tax liability to Florida, consistent with section 220.151, results in a calculation of Florida's portion of taxable underwriting income. For 2005, this amount is $3,910,109.46; for 2006, $2,340,097.51; and for 2007, $624,970.45. The total amount of federal taxable income allocated to Florida for the three-year period of $6,875,177.42.

34. The taxable income is then multiplied by the applicable tax rate of 35%, which results in a federal income tax expense allocated to Florida of $1,368,538.46 for 2005; $819,034.13 for 2006; and $218,739.45 for 2007, totaling $2,406,312.10 for the three-year period at issue.

35. The undersigned notes that Premier only writes workers' compensation insurance. It does not write other lines of insurance, which makes the allocation of earned premium much simpler than it would be for a company writing multiple lines of insurance.

36. Under the methodology described above, Premier determined that $2,406,312.10 is the appropriate amount of federal income tax expense to be deducted for calendar years 2005-2007, resulting in an excess profit pursuant to section 627.215, of $660,907.

37. Mr. Hester, a certified public accountant and president of Premier, testified that this methodology was used by Premier in determining its Florida corporate income tax liability.

38. The methodology described above uses the amounts that Premier actually paid in taxes, and therefore reflects the actual expense experienced by Premier. It is accepted as a reasonable method.

39. According to Mr. Watford, the Office does not determine the methodology that must be used in allocating expenses. The insurance company provides the methodology and the data to support it, and then the Office determines whether, in a given case, the methodology is appropriate.

40. Premier points out that the Office has provided no guidance on how to allocate federal income tax expense for excess profits reporting. That no guidance has been offered is understandable, inasmuch as the Office holds firmly to the belief that no allowance for federal income tax expense should be made. Nonetheless, the Office reviewed the method provided by Premier and did not find it to be reasonable.

41. Premier included in its Form F filing for the years 2005-2007 a deduction for the portion of Florida corporate income tax expense not related to investment income. The Office accepted the Florida corporate income tax deduction, which is

calculated using the same allocation method Premier used to allocate federal income tax expense.

42. Indeed, the Office acknowledged at hearing that it has permitted the methodology of direct written premium in Florida divided by direct written premium written everywhere for the determination of other expenses for excess profits filings, and has only rejected the methodology on one occasion. However, it has not accepted this same methodology for determining the appropriate amount of federal income tax expense and does not believe it to be a reasonable methodology. The rationale for this distinction is that, in Mr. Watford's view, federal income tax is "a totally different type of expense."

43. Mr. Watford did not consult an accountant or certified public accountant in making the determination that the methodology used was impermissible.

44. Mr. Watford opined that in order to determine that a proposed methodology is reasonable, the insurance company would need to have an adjustment in the profit factor, i.e., submit a new rate filing for the years in question; have a projected tax expense that did not exceed the expense he calculated, based on the effect on future tax expenses caused by the return of excess profits; and submit a methodology that was "appropriate for the insurance company."

45. This approach is rejected. First, the rate filing is supposed to be a forecast, and the Office cited to no authority for adjusting the forecast in light of actual events. Further, Mr. Watford admitted that in this instance, the profit and contingencies factor is already at zero for the years at issue, and section 627.125 provides that no factor less than zero can be used to determine excess profits.

46. Second, the excess profits statute specifies that the deduction for administrative and selling expenses is for those expenses incurred in Florida or allocated to Florida for the current year. Unlike incurred losses and loss adjustment expenses, administrative and selling expenses are not developed to an ultimate basis, which appears to be what the Office is attempting to require. Administrative expenses are incurred by calendar year.[1/] Other than the net cost of re-insurance, the Office has not permitted any expense that is to be valued at a date that is later than the end of the calendar year(s) at issue in the excess profits filing. The future effect of these expenses would be considered in the year that effect is realized.

47. Third, allowing whatever is "appropriate for the insurance company" is simply too nebulous a standard, to the extent it is a standard at all, to apply.[2/]

48. As noted by Mr. Hester, federal income tax liabilities are governed by the Internal Revenue Code and its attendant regulations, and not tied specifically to underwriting gain or loss.[3/] Similarly, Florida corporate income tax liabilities are governed by Florida's taxing statutes. The fact that their calculation is not governed by the Florida Insurance Code does not change the fact that they are administrative expenses borne by the insurance company.

## CONCLUSIONS OF LAW

49. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2012).

50. Premier is subject to the jurisdiction and regulation of the Office pursuant to the Florida Insurance Code, and is subject to the requirements of section 627.215.

51. The issue originally presented in this case was whether Premier was required to return the amount of excess profits listed in the Office's Notice of Intent to Issue Order to Return Excess Profits. During the course of the proceeding, the parties have stipulated to all but the resolution of how much, if any, federal income tax expense could be deducted as an administrative or selling expense in determining the amount of excess profits.

52. Premier has asserted that it is the Office's burden to demonstrate that the allocation it proposes violated section 627.215. However, it is Premier who is asserting that it should be able to deduct a portion of federal income tax, and that the methodology in section 220.151 is a reasonable means to determine the amount to be deducted. Because Premier is asserting this affirmative position, the undersigned concludes that Premier bears the burden to prove by a preponderance of the evidence that its allocation method is permissible and reasonable. Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977); § 120.57(1)(j), Fla. Stat. The undersigned also concludes that Premier has met its burden.

53. Section 627.215 provides in pertinent part:

> 627.215 Excessive profits for workers' compensation, employer's liability, commercial property, and commercial casualty insurance prohibited.--
>
> (1)(a) Each insurer group writing workers' compensation and employer's liability insurance as defined in s. 624.605(1)(c), commercial property insurance as defined in s. 627.0625, commercial umbrella liability insurance as defined in s. 627.0625, or commercial casualty insurance as defined in s. 627.0625 shall file with the office prior to July 1 of each year, on a form prescribed by the commission, the following data for the component types of such insurance as provided in the form:
>
> 1. Calendar-year earned premium.

2. Accident-year incurred losses and loss adjustment expenses.

3. The administrative and selling expenses incurred in this state or allocated to this state for the calendar year.

4. Policyholder dividends applicable to the calendar year.

Nothing herein is intended to prohibit an insurer from filing on a calendar-year basis.

* * *

(4) Each insurer group's underwriting gain or loss for each calendar-accident year shall be computed as follows: The sum of the accident-year incurred losses and loss adjustment expenses as of December 31 of the year, developed to an ultimate basis, plus the administrative and selling expenses incurred in the calendar year, plus policyholder dividends applicable to the calendar year, shall be subtracted from the calendar-year earned premium to determine the underwriting gain or loss.

(5) For the 3 most recent calendar-accident years for which data is to be filed under this section, the underwriting gain or loss shall be compared to the anticipated underwriting profit, except in the case of separately reported commercial umbrella liability insurance for which such comparison shall be made for the 10 most recent calendar-accident years.

* * *

(7)(a) Beginning with the July 1, 1991, report for workers' compensation insurance, employer's liability insurance, commercial property insurance, and commercial casualty insurance, an excessive profit has been realized if the net aggregate underwriting gain for all these lines combined is greater than the net aggregate anticipated

underwriting profit for these lines plus 5 percent of earned premiums for the 3 most recent calendar years for which data is to be filed under this section. . . .

* * *

(8) As used in this section with respect to any 3-year period, or with respect to any 10-year period in the case of commercial umbrella liability insurance, "anticipated underwriting profit" means the sum of the dollar amounts obtained by multiplying, for each rate filing of the insurer group in effect during such period, the earned premiums applicable to such rate filing during such period by the percentage factor included in such rate filing for profit and contingencies, such percentage factor having been determined with due recognition to investment income from funds generated by Florida business, except that the anticipated underwriting profit for the purposes of this section shall be calculated using a profit and contingencies factor that is not less than zero. Separate calculations need not be made for consecutive rate filings containing the same percentage factor for profits and contingencies.

(9) If the insurer group has realized an excessive profit, the office shall order a return of the excessive amounts after affording the insurer group an opportunity for hearing and otherwise complying with the requirements of chapter 120. Such excessive amounts shall be refunded in all instances unless the insurer group affirmatively demonstrates to the office that the refund of the excessive amounts will render a member of the insurer group financially impaired or will render it insolvent under the provisions of the Florida Insurance Code.

> (10) Any excess profit of an insurance company as determined on July 1, 1991, and thereafter shall be returned to policyholders in the form of a cash refund or a credit toward the future purchase of insurance. The excessive amount shall be refunded on a pro rata basis in relation to the final compilation year earned premiums to the policyholders of record of the insurer group on December 31 of the final compilation year. (emphasis added).

54. In Premier Group Insurance Company v. Office of Insurance Regulation, Case No. 12-1201RU (DOAH July 5, 2012), the Office was ordered to discontinue its reliance on the agency policy that federal income tax expense cannot be deducted as an expense for excess profits purposes. While the Office may not automatically reject deductions for federal income tax expenses, rule 69O-189.007 still requires the insurance company to provide an explanation of the methodology used in deriving the expenses, including supporting data. The Office must then review the methodology and supporting data and determine whether it is reasonable.

55. In this case, the methodology used was reasonable. The methodology is one dictated by the Legislature for insurance companies in determining an insurance company's allocation of federal income tax for purposes of paying Florida corporate income tax. No credible reason was presented why the method dictated for use by one state agency in allocating federal income

tax cannot be used by another state agency to determine the same allocation for another purpose.

56. The Office claims that the expenses were not incurred in Florida. Section 627.215, however, allows for the deduction of administrative and selling expenses "incurred in this state or allocated to this state for the calendar year." § 627.215(1)(a)4., Fla. Stat. (emphasis added). Section 220.151 provides in pertinent part:

> (1)(a) Except as provided in paragraph (b), the tax base of an insurance company for a taxable year or period shall be apportioned to this state by multiplying such base by a fraction the numerator of which is the direct premiums written for insurance upon properties and risks in this state and the denominator of which is the direct premiums written for insurance upon properties and risks everywhere. For purposes of this paragraph, the term "direct premiums written" means the total amount of direct premiums written, assessments, and annuity considerations, as reported for the taxable year or period on the annual statement filed by the company with the Office of Insurance Regulation of the Financial Services Commission in the form approved by the National Convention of Insurance Commissioners or such other form as may be prescribed in lieu thereof.

57. "Allocate" is defined as "to apportion for a specific purpose or to particular persons or things." http://www.merriam-webster.com/dictionary/allocate. "Apportion" is listed as a synonym for "allocate." Given that the words are virtually interchangeable in this context, it is concluded that taxes

apportioned to Florida for purposes of section 220.151 are also allocated to Florida, and as such can be deducted as expenses incurred in or allocated to Florida for purposes of section 627.215.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Office enter a Final Order finding that $2,406,312.10 may be deducted for federal income tax expense incurred or allocated to Florida for purposes of section 627.215, and that Premier must return $660,907.90 in excessive profits to its policyholders.

DONE AND ENTERED this 19th day of December, 2012, in Tallahassee, Leon County, Florida.

LISA SHEARER NELSON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of December, 2012.

## ENDNOTES

[1/] The Office proffered testimony regarding Petitioner's ability to deduct the amount of returned excess profits in future income tax returns. While the testimony is consistent with the Office's argument and was reviewed by the undersigned, it is ultimately rejected as unpersuasive. The timing and amount of any deduction for return of excess profits is speculative. So is the certainty that the tax structure for corporate entities will remain the same.

[2/] The undersigned is mindful of the fact that, in light of the 2012 amendment to section 627.125, workers' compensation insurers will no longer file excess profits reports. This repeal, however, does not change the fact that the statute provides for current-year administrative expenses.

[3/] Indeed, it seems that the federal tax burden could be higher, as opposed to lower if based solely on underwriting and investment gain, because there would be adjustments for deductions to which the company may be entitled.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.