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PENNSYLVANIA TEST AUDIT PROGRAM **BULLETIN # 101**

TEST AUDIT APPEAL DECISION

Per Bureau Circular No. 1532, the result of an insurance carrier appeal to the Audit Committee is presented to the membership for their information.

The appeal involved an employer whose authorized basic classifications were Codes 804, School Bus Operation, and 817, Charter Bus Operations. The appeal centered on the payroll allocation of miscellaneous employees (mechanics) at the insured's Delaware location. The Bureau's test audit had assigned the employees in question to the governing classification, Code 804. While agreeing that these were miscellaneous employees, the carrier's position was that the employees should be assigned to Code 804 or Code 817, depending on which named entity each employee worked for rather than applying the governing classification to all the employees in question.

The carrier provided an overview of the employer's business operations. The employer operated multiple entities in both Pennsylvania and Delaware. The employer had four FEIN numbers representing two businesses in Pennsylvania and two businesses in Delaware. Each state had a separate legal entity set up for the employer's school bus operations and charter bus operations. For the Delaware operations, the mechanics (and other miscellaneous employees) were hired by a specific business entity, either the school bus operation or the charter bus operation. The mechanics were reportedly hired to perform repairs specifically for the school bus or charter bus operation. The carrier contended that, since the employees were hired by a specific entity and the payroll was kept by the specific entity, the employee's payroll should be attributed to that entity. Further, the fact that all the entities described above were included under one policy should not dictate the assignment of the mechanics to the governing classification as miscellaneous employees. The carrier reasoned that, if the insured were to have separate policies for each entity and/or had separate ownership that mandated a separate policy for each entity, those miscellaneous employees would be assigned to the applicable business classification assigned to each policy.

Bureau staff noted that the decision to assign the payroll of the miscellaneous employees to the governing classification, Code 804, was based on established Manual rules. For an employer with multiple entities, the governing classification is established by calculating the payroll of each basic classification exclusive of any miscellaneous employee assignments. The basic business classification that generated the majority of payroll was deemed the governing classification, and the miscellaneous employees were then classified accordingly.

Additionally, Bureau staff noted that the insured did not maintain separate garage locations or an exclusively-dedicated staff for the mechanical repair operations at its Delaware facility. The insured's repair garage in Delaware was a single location where both the school buses and charter buses were repaired, with no physical separation between the two work areas. There were no specific bays or repair areas specifically allocated to either type of repair. Also, while infrequent, the employer's mechanical employees would interchange between the repair operations as needed. Therefore, as there was not physical separation between the repair operations and there was interchange of staff conducting repairs, staff submitted that the mechanics were properly assigned to the governing classification, i.e., Code 804.

The Audit Committee questioned the carrier and staff regarding their respective cases as presented. The main point of questioning centered on the treatment of multiple entities on a single policy. Staff noted that combination of entities on a policy was mandatory only in cases of common majority ownership, a continuity of operations and interchanging crew. Further, staff confirmed that the number of entities on a particular policy did not impact the classification assignment. The businesses listed on the policy were reviewed as one complete risk, and, if multiple classification criteria were met, then additional classes were assigned in accordance with established Manual rules.

In resolving the appeal, the Committee focused primarily on the Manual definition of "insured" and the resulting application of the miscellaneous employee rule. A consensus developed that the "insured" in this case included the commonly-owned entities listed in Item 1 of the Policy Information Page. In the Committee's view, these listed entities should be treated as a common risk, and Manual rules applied accordingly. Since the mechanics in question shared the same work area, Manual rules prohibited the assignment of more than one classification. Further, since the employees in question were deemed to be miscellaneous employees, assignment of their payroll to the governing classification was warranted.

Accordingly, upon motion made and duly seconded, the Committee voted to sustain the Bureau decision of assigning the governing classification, Code 804, to payroll developed by the insured's mechanics at its Delaware location. Five members voted in favor of the motion, one member voted against the motion.