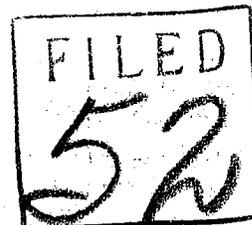


INSURANCE: Foreign insurance company reinsuring stipulated premium plan life insurance business, ceded to it by Missouri stipulated premium plan life company surrendering its charter, is liable to assessment of a Missouri premium tax on such business under Missouri's retaliatory law, Section 375.450, RSMo Supp. 1957.

November 12, 1959



Honorable G. Lawrence Leggett
Superintendent
Division of Insurance
Jefferson Building
Jefferson City, Missouri

Dear Mr. Leggett:

This opinion is rendered in reply to your inquiry reading as follows:

"On or about November 30, 1954, Jackson Life Insurance Company, a regular life company domiciled in the State of Arkansas and licensed to do business in Missouri, reinsured the stipulated premium plan business of Jefferson Central Life Insurance Company, a Missouri stipulated premium plan company. Assumption certificates were issued by the Arkansas company directed to the reinsured business.

"The stipulated premium plan contracts are continued in force by this Arkansas company, along with regular life business, as it continues to be licensed as a foreign company to do business in Missouri. The Arkansas company resists payment of a 2 1/2% premium tax assessed against it by this Division in relation to the stipulated premium plan business, referred to above, for the years 1956, 1957 and 1958. Such tax was assessed on a retaliatory basis, and your opinion is requested as to the legality of such assessment."

It is apparent from the above inquiry that Jackson Life Insurance Company, a regular life insurance company, was domiciled in the State of Arkansas; that it was licensed to conduct its business in Missouri as a foreign corporation in 1956, 1957 and 1958; that part of the business it conducted in Missouri during those years consisted of servicing contracts of insurance originally written by Jefferson Central Life Insurance Company, a Missouri stipulated

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premium plan life insurance company, but which contracts were re-insured and assumed by Jackson Life Insurance Company under a re-insurance agreement entered into in November, 1954; and that the Arkansas company resists the premium tax assessed against it in relation to those contracts for the years in question.

For the purpose of this opinion, we may assume that the stipulated premium contracts did not change character by reason of the reinsurance agreement, and had such contracts continued to be carried out by the Jefferson Central Life Insurance Company, a Missouri stipulated premium plan company, a domestic premium tax in Missouri would not have been applied to such business because of the assessment potential applicable to such contracts and found in Missouri's stipulated premium plan law at Section 377.260, RSMo 1949. This principle of premium tax exemption as to domestic stipulated premium plan life companies in Missouri is clearly stated in an opinion of this office directed to you under date of May 4, 1955.

Paragraph 14 of the reinsurance agreement between Jackson Life Insurance Company and Jefferson Central Life Insurance Company, approved by the Superintendent of the Division of Insurance of Missouri and the Commissioners of Insurance of the States of Arkansas and Tennessee under date of November 23, 1954, contained the following:

" * * * It is further ORDERED that as soon as practicable the Jefferson Central Life Insurance Company shall cease doing business and surrender its charter."

The foregoing provision is evidence that Jefferson Central Life Insurance Company ceded its stipulated premium plan business to Jackson Life Insurance Company for the purpose of having the Arkansas company take over and reinsure such business and to service the same as though it had originated the business in the first instance. Jefferson Central Life Insurance Company did cease business as a licensed insurance company within a reasonable time after the reinsurance agreement of November, 1954, and it must be reasonably concluded that Jackson Life Insurance Company, in servicing the contracts in question and collecting premiums due thereon from Missouri policyholders, was conducting its business in Missouri as a foreign company licensed to do business in Missouri. As to the business in question, the Arkansas company is not in a position to contend that it was not conducting such stipulated premium plan business as any other foreign company would be doing in Missouri. This being so, the Arkansas company would find that Section 377.430, RSMo 1949, a

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part of Missouri's stipulated premium plan law, taxes foreign stipulated premium plan companies in the following language:

" * * * 2. Neither shall any foreign corporation, company, association or society be authorized to do business in this state under sections 377.200 to 377.460, unless it collects in advance for the benefit of its policyholders a net premium equal to at least that provided for by the terms of sections 377.200 to 377.460; provided, that all such foreign corporations shall annually pay a tax on the gross premiums received in this state on account of business done in the state at the rate of one per cent per annum, which shall be in lieu of all other taxes as herein otherwise provided; said tax shall be levied and collected as is provided for in the collection of taxes on other insurance companies."

You have indicated that a premium tax was assessed on the business in question in the years 1956, 1957 and 1958 on a retaliatory basis.

Missouri's general retaliatory law applicable to all foreign insurance companies doing business in Missouri is found at Section 375.450, RSMo Supp. 1957, in the following language:

"1. When by the laws of any other state or foreign country any premium or income or other taxes, or any fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions are imposed upon Missouri insurance companies or carriers doing business, or that might seek to do business in such other state or country, which in the aggregate are in excess of such taxes, fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions directly imposed upon insurance companies of such other state or foreign country under the statutes of this state, so long as such laws continue in force, the same obligations, prohibitions, and restrictions of whatever kind shall be imposed upon insurance

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companies or carriers of such other state or foreign country doing business in Missouri. Any tax, license or other obligations imposed by any city, county or other political subdivision of a state or foreign country on Missouri insurance companies or carriers shall be deemed to be imposed by such state or foreign country within the meaning of this section, and the insurance commissioner for the purpose of this section shall compute the burden of any such tax, license or other obligations on an aggregate statewide or foreign-countrywide basis as an addition to the tax and other charges payable by similar Missouri insurance companies or carriers in such state or foreign country. The provisions of this section shall not apply to ad valorem taxes on real or personal property or to personal income taxes.

2. All licenses, fees, taxes, fines or penalties collectible under this section shall be paid to the collector of revenue."

Section 66.604, Arkansas Statutes, 1947, Annotated, provides:

"Every foreign or alien life, accident, life and accident, health and accident, or life, health and accident insurance company, corporation or association, and every casualty company, corporation or association, authorized to do business in this State, shall file with the Commissioner at the same time it makes its annual statement, a sworn statement of its gross premium receipts in this State for the year ending the 31st day of December next preceding, and on such gross receipts each of said companies shall pay into the State Treasury on or before the first day of March, 1947, and annually on or before the first day of March thereafter, a tax of two and one-half per centum [2 1/2%] on such gross receipts as a privilege tax for the privilege of transacting business in this State. No certificate of authority shall be issued to any such company

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until said tax is paid. Said tax shall be in lieu of all other taxes, State, county or municipal, based on such gross premium receipts, nor shall any city, town or municipality impose any license fees or privilege tax upon any such company, or the agent of any such company, for the privilege of transacting such business of insurance. In estimating such gross premium receipts, said companies shall not take credit for any dividends, under whatever name called, paid policy holders for surrender of policies. The purpose of this law is to impose a tax of two and one-half per centum [2 1/2%] on the gross receipts of every insurance company coming within the description herein above given, whether such premium receipts be in cash or in the shape of notes or other evidences of credit. Provided that it is not the intention of this act to levy a tax of more than 2% on premiums other than life, health and accident insurance.

"Twenty per cent [20%] of the revenue derived under this section shall be deposited in the State Treasury to the credit of a fund known as the 'Sanitation Fund of the State Board of Health.' Eighty per cent [80%] shall be deposited in the State Treasury to the credit of the General Revenue Fund now provided by law; provided, that in the preparation of joint budgets an amount equal to twenty-five per cent [25%] of the allocation from the 'Sanitation Fund of the State Board of Health' be set aside for the purchase of drugs, biologicals, etc., for the treatment of the indigent sick when necessary, at the discretion of the county judge. And provided further, that no personnel shall be appointed to a county without the approval of the county judge."

It is evident from language appearing in the Arkansas statute referred to above that no exemption from premium tax is accorded to life insurance business written on the stipulated premium plan by any foreign company doing such business in Arkansas; and life, health and accident insurance is to bear the maximum rate of premium tax therein provided, to-wit, 2 1/2%.

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Only by applying the 2 1/2% premium tax to the business in question for the years 1956, 1957 and 1958 can you fully carry out the directives contained in Section 375.450, RSMo Supp. 1957, and it is the opinion of this office that an assessment made in conformity with provisions of such statute constitutes a legal assessment.

CONCLUSION

It is the opinion of this office that Jackson Life Insurance Company, domiciled in the State of Arkansas and reinsuring stipulated premium plan life insurance business ceded to it in 1954 by Jefferson Central Life Insurance Company, a Missouri stipulated premium plan company surrendering its charter, is liable to assessment on such business for premium taxes for 1956, 1957 and 1958 at the rate of 2 1/2% under Missouri's retaliatory law, Section 375.450, RSMo Supp. 1957.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. G'Malley.

Yours very truly,

John M. Dalton
Attorney General

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