

TAXATION:-The fact that a foreign insurance company pays tax upon premiums doesnot excuse it from paying a property tax upon personal property located within the State.

*L. 5979 Laws 31*

*12-11*  
December 5, 1933.



Mr. Charles L. Chalender,  
Assistant Prosecuting Attorney,  
Springfield, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"Our Assessor has requested that we obtain an opinion from you as to whether or not personal property of foreign insurance companies, which is located in Greene County, is assessable here. We call your attention to Section 5979, Revised Statutes of Missouri, 1929, which section states that the tax imposed by that section shall be in lieu of all other taxes."

Section 5979, Laws of Missouri, 1931, page 242, provides as follows:

"Every insurance company or association, not organized under the laws of this state, shall, as hereinafter provided, annually pay tax upon the premiums received whether in cash or in notes, in this state or on account of business done in this state, for insurance of life, property or interest in this state at a rate of two per cent. per annum in lieu of all other taxes, except as in this article otherwise provided, which amount of taxes shall be assessed and collected as hereinafter provided: Provided, that 'Fire and casualty' insurance companies or associations shall be credited with canceled or return premiums, actually paid during the year in this state, and with premiums on reinsurance with companies, authorized and licensed to transact business in Missouri, which reinsurance shall be reported by the company reinsuring such business; but no credit shall be allowed any such insurance company or association for reinsurance in companies not licensed to transact business in Missouri."

The above section in various forms has been upon our statute books for many years. As it now stands every foreign

insurance company is required to pay a premium tax at the rate of 3% per annum in lieu of all other taxes. Under the various laws dealing with cities of various classes, such cities have a right to exact license tax upon a great variety of occupations including insurance companies. In *City of Lamar v. Adams*, 90 M. A. 35, the question arose as to the meaning of the foregoing section. The court at page 42 says:

"By reference to the emergency clause of the act it will be seen that, after all, the main purpose intended by it was to withdraw from the counties, cities and towns, the power which was conferred upon them under the statute of 1899, supra, to tax foreign insurance companies on their annual premiums, or in other words to eliminate from the then existing statutes the power thereby given to the various local authorities to impose taxes on the annual premiums received by them. And these local taxes so abolished were we think, the 'other taxes' referred to in the second section of the act."

In *Massachusetts Bonding Company v. Chorn*, 201 S. W. 1122, the court had under consideration the identical section which we are now discussing. The court says at page 1124:

"The payment of the tax entitled the Company under the laws of the State to transact this business in its capacity as a corporation. The amount of the tax is fixed at 3% on premiums received whether in cash or in notes in this State on account of business done in this State. That this is a tax upon the business done in this state under the protection of its laws, there can be no doubt."

Again at page 1125, the court says:

"In addition to what we have incidentally said on that subject in the preceding paragraphs, we will say that this tax is not imposed upon property in any sense. The only property right involved in this tax is the right of appellant to acquire property by the exercise of its corporate capacity in this State purchased and paid for by the payment of this tax."

It will be seen from the foregoing that the tax of 3% which the foreign insurance company pays under Section 5979 on its premiums is not a property tax in the sense that the tax on its personal property would be. The court above says that the above tax entitled the Company to do business in this State. In the *City of Lamar* case above the court held that the "other taxes" mentioned in the section meant other taxes on its premiums which cities and counties might levy.

It was certainly never intended that a foreign insurance company, by the payment of its premium tax which entitled it to do business in this State, should be exempt from paying taxes upon its personal property located within your county. Bear in mind this situation is not similar to a tax laid upon the net assets of a corporation, or upon its capital stock where its personal property is reflected and contained in the net assets of the company. This, as we understand it, is purely a tax upon the premiums, and, while under said section, it is no longer possible for cities and counties to exact a tax on premiums from such companies, yet we do not believe that the payment of the premium tax exempts such corporation from the other constitutional and statutory provisions of this State.

Section 6 of Article X of the Constitution of Missouri provides as follows:

"The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable; also, such property, real or personal, as may be used exclusively for agricultural or horticultural societies: Provided, That such exemptions shall be only by general law."

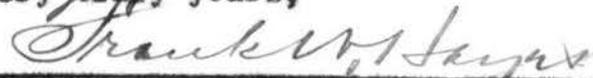
Section 7 of Article X of the Constitution of Missouri provides as follows:

"All laws exempting property from taxation, other than the property above enumerated, shall be void."

Under Section 6 above the Constitution provides what property in this State shall be exempt from taxation. Section 7 above provides that any laws exempting property from taxes other than the property enumerated in Section 6 shall be void. We do not find any provision in the Constitution or in the statutes of this State that exempts from taxation tangible personal property owned by foreign insurance companies and located within your county. Not being expressly exempted it, therefore, must be taxable. In view of Sections 6 and 7 above, any attempt made to exempt from taxation personal property of this insurance company would be void.

It is therefore our opinion that Section 5979, Laws of Missouri 1931, page 242, does not exempt insurance companies from paying a property tax upon their personal property located in and assessed by your county.

Very truly yours,



Assistant Attorney General.

APPROVED:

Attorney General.