

INSURANCE) Section 6012, R. S. Missouri, 1939, comprehends gross
) premiums obtained and is not limited to net premiums
TAXATION) obtained.

August 8, 1950

8/11/50

Honorable C. Lawrence Leggett
Superintendent, Division of Insurance
Department of Business and Administration
Jefferson City, Missouri



Dear Mr. Leggett:

The following opinion is rendered in reply to your request of recent date reading as follows:

"Pursuant to a request made from your office, our requests for an opinion dated March 17, 1950 and June 30, 1950 with reference to Section 6012, R. S. Missouri, 1939 are herewith withdrawn.

"Under the provisions of Section 6011, R. S. Missouri, 1939, individuals may be licensed to place Missouri insurance business in companies not admitted to do business in this state under certain very limited circumstances. When business is placed in a non-admitted company by an individual possessing a license under Section 6011, a tax of 5% is due to the state of Missouri on the premiums arising out of this business. The tax is levied under the provisions of Section 6012, R. S. Missouri, 1939.

"This Division has been permitting excess agents licensed under the provisions of Section 6011 to make certain deductions in filing the tax return required under Section 6012, R. S. Missouri, 1939, among those deductions being a deduction for the cancellation of policies of insurance placed in a non-admitted company. In other words, the agent is permitted to deduct from the total amount of premiums obtained the amount of premiums returned

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upon cancellation in order to determine his net premiums and the net premiums obtained by him have been used as a tax basis. Another example is the situation where the premium is subject to an adjustment and upon adjustment, a certain portion of the initial premium deposit is returnable.

"In Metropolitan Life Insurance Company v. Scheufler cited by the Supreme Court of Missouri in 1944, and reported in 180 S.W. (2d) 742, the Court stated that 'The return of any part of a premium received will not, of itself, operate as a prorata reduction of the tax payable.' l. c. 744. There was, of course, a different tax statute involved in the Metropolitan Life case, but the language of the court has created a doubt as to the propriety of permitting any deductions whatsoever in computing the tax liability of excess agents.

"Accordingly, your opinion is respectfully requested as to whether the tax provided in Section 6012, Article 10, Chapter 37, R. S. Missouri, 1939, is a gross premium tax or whether the tax should be levied on the net premiums received by the excess agent. In that connection, your attention is respectfully directed to Section 6014 and Article 12, R. S. Missouri, 1939, wherein provisions are made for other types of premium taxes."

Section 6011, R. S. Missouri, 1939, provides:

"The superintendent of insurance, however, may issue to an agent who is regularly commissioned to represent one or more insurance companies, authorized to do business in this state, a certificate of authority to place excess lines of insurance in companies not admitted to do business in this state: Provided, however, that the party desiring such excess of insurance shall first file an affidavit with the superintendent of insurance that he has exhausted all the insurance obtainable from authorized companies."

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Section 6012, R. S. Missouri, 1939, provides:

"Every agent so licensed shall report, under oath, to the superintendent of insurance on the first days of June and December of each year the amounts of premiums obtained by him for such excess insurance, and shall pay the said superintendent a tax of five per cent thereon; and he shall also file an approved bond with the said commissioner in the sum of one thousand dollars for the faithful observance of the above provisions and a prompt discharge of his duties therein."

The tax provided for in Section 6012, quoted above, is to be paid by an insurance agent in this state who places excess insurance with companies, not licensed to do business in Missouri, pursuant to authority contained in Section 6011, quoted above.

It is admitted that the Division of Insurance has been permitting these insurance agents, denominated excess agents, to deduct from their returns filed under Section 6012, supra, premiums returned to the policyholder on account of cancellations, or adjustments made with the policyholder which require a portion of the initial premium deposit to be returned to the policyholder.

Sections 6011 and 6012, supra, make no reference whatever to gross or net premiums. Section 6012 refers only to "premiums obtained" by the agent for such excess insurance. Upon the amount of "premiums obtained" by the agent the Legislature of Missouri has plainly imposed the tax. In Metropolitan Life Insurance Company v. Scheufler (Mo.), 180 S.W.(2d) 742, the Supreme Court of Missouri was construing the term "premiums received" as the same is used in Section 6904, R. S. Missouri, 1939, a statute taxing premiums received by foreign insurance doing business in Missouri. In the course of its opinion the court spoke as follows at 180 S.W.(2d) 742, l. c. 744:

"The term is not construed by this court to mean that only those portions of the premiums received which are retained for (or used in) the company's business are taxable. The term is, by this court, construed according to plain meaning of the language as in the statute written, that is, premiums received, whether in cash or in notes, in this state or on account of business done in this state. * * * The return

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of any part of a premium received will not, of itself, operate as a pro tanto reduction of the tax payable."

In the Metropolitan Life Insurance case, cited above, the court had before it Section 6094, R. S. Missouri, 1939, a taxing statute which exempted from taxation certain types of premium refunds specified in the section. Section 6012, R. S. Missouri, 1939, which we are called upon to construe makes no reference to any type of premium refunds as being deducted for taxing purposes. The words of the statute should be given this plain and ordinary meaning in the absence of ambiguity.

CONCLUSION

It is the opinion of this department that the term "premiums obtained" as found in Section 6012, R. S. Missouri, 1939, has reference only to gross premiums obtained and is not to be limited to "net" premiums obtained.

Respectfully submitted,

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APPROVED:



J. E. TAYLOR
Attorney General

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