

TAXATION: Insurance companies may deduct intangible  
personal property tax in computing premium  
INSURANCE: tax under Section 148.400, RS Mo 1949.

7 14

JOHN M. DALTON  
XXXXXXXXXX



April 14, 1953

John C. Johnsen  
XXXXXXXXXX

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

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Section 148.400, R.S. Mo. 1949, allows certain deductions, enumerated therein, from premium taxes payable to the State by insurance companies organized in or admitted to this State.

"Certain domestic insurance companies are now contending, and so reporting on their tax reports to this office, that they are permitted under said section to deduct intangible personal property taxes paid under Laws, 1945, p. 1914, Sections 146.010-146.130, R.S. Mo. 1949.

"Your opinion is respectfully requested as to whether we may allow such intangible personal property taxes as a deduction from premium taxes and so assess the companies concerned."

Section 148.400, RSMo 1949, provides as follows:

"All insurance companies or associations organized in or admitted to this state may deduct from premium taxes payable to this state, in addition to all other credits allowed by law, income taxes, franchise taxes, personal property taxes, valuation fees, registration fees and examination fees paid under any law of this state."

Honorable C. Lawrence Leggett

This section authorizes insurance companies to deduct certain taxes in computing their premium tax. It is a general rule of law that deductions in computing taxes are allowed only according to statutory authorization and the burden is upon the taxpayer to show that he is entitled to the deduction claimed. 27 Am. Jur., Income Taxes, Sec. 93, p. 359.

Subject to constitutional limitations regarding uniformity and equality, which are not here involved, the matter of deductions is one for the Legislature, and authority in such regard is not limited by constitutional restrictions such as are found when dealing with exemptions from taxation. See Section 6, Article X of the Constitution of Missouri, 1945. Thus, the basic question presented by you is one of statutory construction in which the intention of the Legislature is a paramount factor.

What is now Section 148.400, RSMo 1949, first appeared in Laws of Missouri, 1945, at page 993. It was approved April 28, 1945. At that time all personal property, tangible and intangible, was taxed alike (Sec. 10939, R.S. Mo. 1939). At that time Section 655, R.S. Mo. 1939 (Sec. 1.020(8), RSMo 1949) provided: "The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute: \* \* \* tenth, the words 'personal property' shall include money, goods, chattels, things in action and evidences of debt; \* \* \*" Section 11211, R.S. Mo. 1939, then in effect, found in the chapter relative to taxation and revenue, contained the following provision: "The term 'personal property,' wherever used in this chapter, shall be held to mean and include bonds, stocks, moneys, credits, \* \* \*"

At the time of the adoption of what is now Section 148.400, RSMo 1949, the 1945 Constitution had been adopted with its novel treatment of intangible personal property for the purpose of taxation (Sec. 4, Art. X, Const. of Mo. 1945). However, the statutes effectuating that provision were not approved until April 19, 1946 (Laws of Mo. 1945, p. 1914). Said statutes became effective on July 1, 1946.

In view of the fact that at the time of the adoption of Section 148.400, RSMo 1949, all personal property was treated alike for the purpose of taxation, it seems clear that the Legislature intended to permit the deduction of taxes paid on all personal property, tangible and intangible. The new system for the taxation of intangible personal property, which became

Honorable C. Lawrence Leggett

effective under the new Constitution on July 1, 1946, did not change the tax on intangible personal property from a personal property tax.

In the case of *In Re Armistead*, 362 Mo. 960, 245 S.W. (2d) 145, the court, in discussing the intangible personal property tax, stated (245 S.W. (2d) 147):

" \* \* \* The tax is a property tax levied upon specified intangible personal property and is based upon the property's yield during the preceding calendar year at the rate of 4% of such yield. \* \* \*"  
(Emphasis ours.)

In the case of *General American Life Ins. Co. v. Bates*, 249 S.W. (2d) 458, the Supreme Court, in referring to the intangible personal property tax, stated (1.c. 462):

" \* \* \* The instant case involves a property tax, expressly so designated in the constitution, Art. 10, Sec. 4, quoted supra, and made subject to specific constitutional inhibitions. \* \* \*"

Thus, it is clear that the intangible personal property tax is a tax on personal property. In view of the fact that the Legislature has not seen fit to limit the deduction allowable in computing the premium tax to any particular type of personal property, we are of the opinion that deduction of all taxes paid on personal property, tangible and intangible, is permitted.

#### CONCLUSION

Therefore, it is the opinion of this department that under Section 148.400, RSMo 1949, taxes paid on intangible personal property may be deducted in computing the premium tax therein referred to.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Robert R. Welborn.

Yours very truly,

JOHN M. DALTON  
Attorney General

RRW:ml