

INSURANCE: Foreign insurance companies operating in Missouri under Missouri's stipulated premium plan law, Sections 377.200 to 377.460, RSMo 1949, are not subject to Missouri's corporation franchise tax levied under Section 147.010, RSMo 1949. Missouri corporations organized and operating under said stipulated premium plan law are subject to said franchise tax unless they accept the provisions of Missouri's regular life insurance company law found at Sections 376.010 to 376.670, RSMo 1949.



August 30, 1954

Honorable James M. Robertsen  
Chairman, Missouri State Tax Commission  
Room 501, Jefferson Building  
Jefferson City, Missouri

Dear Sir:

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

"Kindly furnish this Commission with your official opinion to whether domestic or foreign insurance companies, operating under the provisions of Sections 377.200 to 377.460, R. S. No. 1949, both inclusive, are subject to corporation franchise taxes in Missouri."

Missouri's general corporation franchise tax statute, Section 147.010 RSMo 1949, provides that domestic and foreign corporations doing business in Missouri are to pay an annual franchise tax admeasured according to the formula outlined in such statute. The exception found in the statute reads, in part, as follows:

"Provided, that this law shall not apply to corporations not organized for profit, nor to express companies, which now pay an annual tax on their gross receipts in this state, and insurance companies, which pay an annual tax on their premium receipts in this state; \* \* \*."

Honorable James M. Robertson

The language found in the above-quoted exception clause of Section 147.010, RSMo 1949, leads to the conclusion that if the type of insurance company referred to in the opinion request is bound by statute particularly applicable to it, to pay an annual tax on its premium receipts in Missouri, it will be exempted from the franchise tax being discussed. In the case of State ex rel. Central Surety Insurance Company v. Tax Commission, 153 S.W. (2d) 43, 348 Mo. 171, the Supreme Court of Missouri spoke as follows at 348 Mo., l.c. 174, on construing this franchise tax statute:

"The only statute that levies a franchise tax is Section 5113, and it expressly exempts such a tax on insurance companies that pay a tax upon gross premium receipts."

Are insurance companies formed under the specific provisions of Sections 377.200 to 377.460, RSMo 1949, the law particularly applicable to insurance companies formed on the stipulated premium plan, obligated to pay a tax upon their gross premium receipts? Section 377.430, RSMo 1949, sets forth the requirements to be met by a foreign corporation, company, association or society doing business in Missouri, as authorized by Sections 377.200 to 377.460, RSMo 1949, and reads, in part, as follows:

"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."

The language heretofore quoted from Section 377.430, RSMo 1949, clearly brings foreign insurance companies operating in Missouri under the provisions of Section 377.200 to 377.460, RSMo 1949, within the exception clause found in Missouri's

Honorable James M. Robertson

corporation franchise tax statute, Section 147.010, RSMo 1949, heretofore quoted, and causes such foreign insurance companies to be exempt from the franchise tax. From a close examination of the stipulated premium insurance company law, found at Sections 377,200 to 377,460, RSMo 1949, it becomes evident that no statutory provisions therein make it mandatory for Missouri companies organized thereunder to pay a premium tax. Before passing from the stipulated premium plan insurance law, attention is directed to the following language found in Section 377.450, RSMo 1949:

"1. Any domestic life or accident insurance corporation, company or association existing or doing business in this state under the stipulated premium plan law, may, by a majority vote of its directors or trustees, accept the provisions of sections 376.010 to 376,670 RSMo 1949, and amend its articles of incorporation and its bylaws to conform to said chapter, the same as if it had originally been incorporated thereunder,  
\* \* \*."

The above reference is made at this particular point of this opinion for the reason that we now consider pertinent statutes found in the law particularly applicable to the subject of taxation of insurance companies, embraced in Sections 148.310 to 148.460, RSMo 1949. Section 148.310, RSMo 1949, subjects insurance companies to real property and tangible personal property tax. Section 148.320, RSMo 1949, subjects stock companies organized under the provisions of Section 379.010 to 379.190, RSMo 1949, to a premium tax. Section 148.340, RSMo 1949, is a general statute subjecting foreign insurance companies to a premium tax. Section 148.370, RSMo 1949, (L. 1945, p. 993) provides for a premium tax on (1) domestic regular life companies, (2) domestic mutual companies other than life and fire, (3) domestic title insurance companies, and (4) domestic miscellaneous mutual fire companies organized under Sections 379.010 to 379.190 RSMo 1949. Nowhere in the above-mentioned statutes do we find domestic stipulated premium companies subjected to a premium tax.

#### CONCLUSION

It is the opinion of this office that domestic stipulated premium insurance companies organized under the provisions of

Honorable James M. Robertson

Sections 377.200 to 377.460, RSMo 1949, are subject to Missouri's corporation franchise tax levied under Section 147.010, RSMo 1949, unless they have accepted the provisions of the regular life insurance company law under authority contained in Section 377.450, RSMo 1949; that foreign insurance companies operating in Missouri under Sections 377.200 to 377.460, RSMo 1949, being required by Section 377.430, RSMo 1949, to pay premium taxes, are exempt from Missouri's corporation franchise tax.

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

Yours very truly,

JOHN M. DALTON  
Attorney General

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