

INSURANCE: Foreign insurance company doing business in Missouri prohibited under Sec. 148.400 RSMo 1959 from
TAXATION: premium taxes due Missouri amounts paid to satisfy taxes on real estate the company owns in Missouri, and, other than for the purpose of computing premium taxes under a foreign premium tax statute which authorizes the deduction thereof, such real estate taxes are not to be taken into consideration in determining the aggregate burdens imposed by either Missouri or the foreign state when applying the provisions of the Missouri retaliatory law.

March 14, 1961



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

Dear Mr. Leggett:

This opinion is rendered in reply to your inquiry posing the following specific question:

"Is a foreign insurance company licensed to do an insurance business in the state of Missouri entitled to deduct from retaliatory premium taxes those amounts paid to satisfy assessments levied against real estate held by such companies in this state in view of the provisions contained in Sections 375.450, Revised Statutes of Missouri, 1949-1953 Supplement, and 148.400, Revised Statutes of Missouri, 1949?"

The foregoing question was preceded by a statement of facts made by you disclosing that for the years 1958 and 1959 you assessed premium taxes against a California insurance company doing business in Missouri by employing Missouri's retaliatory statute, Section 375.450 RSMo 1959, but refused to allow as a claimed deduction, from premium taxes assessed, the amount of real estate taxes paid to the State of Missouri in 1958 and 1959 on real estate the California company owned in Missouri.

We first take up Missouri statutes affecting taxation of foreign insurance companies doing business in Missouri. Section 148.310 RSMo 1959 provides as follows:

"The real and tangible personal property owned by insurance companies operating in this state shall be assessed and taxed as is real and tangible personal property owned by individuals,

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and the payment thereof and the distribution of the amounts received shall be in the manner provided by the general revenue laws of this state."

Section 148.310 RSMo 1959, quoted supra, makes real and tangible personal property located in Missouri and belonging to foreign insurance companies subject to ad valorem taxation as though owned by individuals, and such statute does not prescribe any exemption from such ad valorem taxation.

Missouri's statute authorizing a tax on premiums of foreign insurance companies is Section 148.340 RSMo 1959, reading as follows:

"Every insurance company or association not organized under the laws of this state, shall, as provided in section 148.350, annually pay tax upon the direct 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 the rate of two per cent per annum in lieu of all other taxes, except as in sections 148.310 to 148.460 otherwise provided, which amount of taxes shall be assessed and collected as herein 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 that life insurance companies shall be credited with dividends actually declared to policyholders in this state, but held by the company and applied to the reduction of premiums payable by the policyholder."

Section 148.400 RSMo 1959, provides:

"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."

From a review of Sections 148.310 to 148.460 RSMo 1959, and with special reference to Section 148.400 RSMo 1959, quoted above, it must be concluded that such statutes do not make provision allowing

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a foreign insurance company doing business in Missouri to deduct from its premium tax levied under Section 148.340 RSMo 1959 any ad valorem taxes levied against real estate owned by such foreign insurance company in Missouri.

In your request for this opinion you have disclosed that you employed Missouri's retaliatory law found at Section 375.450 RSMo 1959 in assessing premium taxes against the foreign (California) company involved. We now must review Missouri's retaliatory law to determine the principle directive therein. Section 375.450 RSMo 1959 provides as follows:

"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 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-country-wide 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.

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

The last sentence, underscored, found in paragraph 1 of Section 375.450 RSMo 1959, supra, contains a positive directive as follows:

"The provisions of this section shall not apply to ad valorem taxes on real or personal property or to personal income taxes."

Until such time as it is determined that the "burdens" mentioned in Section 375.450 RSMo 1959, supra, in the aggregate, to be imposed upon a Missouri company by California exceed such "burdens" to be imposed by Missouri on a California company, we have no reason to retaliate against the California company as directed in Section 375.450 RSMo 1959. This retaliatory statute is not a taxing statute for it does not prescribe a rate of taxation nor does it describe the nature or objects of any tax. It is simply a statute directing retaliation when it is determined that the foreign state's aggregate burdens placed upon a Missouri company are in excess of the aggregate burdens Missouri places upon a like foreign company.

In computing the "aggregate burdens" which may be exacted by either Missouri or California we must of necessity employ the respective statutes of each state, for to do otherwise would place both Missouri and California in the incongruous position of adopting another state's taxing statutes. Once the "aggregate burdens" are computed under both the Missouri and California statutes we are then in a position to compare the "aggregate burdens" of each state and determine for the first time if Missouri's retaliatory law, Section 375.450 RSMo 1959, is to be employed. Having determined to employ the Missouri retaliatory statute we cannot escape the following directive contained therein:

"**The provision of this section shall not apply to ad valorem taxes on real or personal property or to personal income taxes.**"

It is not necessary in this opinion to make a close examination of the California statutes in order to rule the question. We have substantiated the statements found in your request for this opinion disclosing that California's basic premium tax rate is 2.35%, and that certain real estate taxes are allowed as a deduction in computing the premium tax under the California statute. It is proper for you to allow the California statutory deduction when computing the premium taxes under the California premium taxing statute as you seek

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the ultimate "aggregate burdens" which California would place on a Missouri company, but only for that purpose. Missouri premium taxes, as well as authorized deductions therefrom, will be determined under Missouri statutes. Employment of the retaliatory law will effect equalization of the "aggregate burdens" between California and Missouri.

In *Life & Casualty Insurance Co. v. Coleman*, 233 Ky. 350, 25 S.W. (2d) 748, 1.c. 750, the Kentucky Court of Appeals spoke as follows, in 1930, in relation to Kentucky's retaliatory law:

"In enacting the retaliatory insurance statute, it was the purpose of the Legislature to equalize the burdens imposed upon foreign and domestic companies. There can be no equalization of the burden unless the taxes levied or the obligations imposed are the same in the aggregate. In order to provide equality, which is the manifest object of the statute, it is not necessary to levy a specific tax to meet a similar tax levied by another state, but, if the aggregate of the taxes collected from a foreign insurance company in the retaliating state equals the tax imposed on foreign insurance companies by the state in which the taxed company is incorporated, the object of the law has been attained. Equality is the result aimed at and is achieved when the ultimate taxes levied are equal, even though they are imposed by different arms of the respective state governments and are applied to different purposes."

In 1939 the Supreme Court of Kansas, in the case of *Employers Casualty Co. v. Hobbs*, 149 Kan. 774, 89 P. (2d) 923, 1.c. 926, 927, spoke as follows in relation to Kansas' retaliatory law:

"Under our statutes, an insurance company organized under the laws of another state or country is required to pay certain specified fees as a condition to its right to do business in this state. In order to insure that insurance companies organized under the laws of this state seeking to do business in another state may be accorded fair treatment, we have the retaliatory statute. * * And we think it clear, both from the standpoint of the end sought to be accomplished by the statute, and the grammatical structure of the statute, that it was never intended there should be a comparison as between

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the statutory requirements of this state and of the state in which the foreign corporation is chartered so that a particular tax should be measured against a like tax in the other state, a particular fee measured against a like fee, etc., nor that taxes should be aggregated and measured against aggregated taxes of the other state, fees aggregated and measured against fees, etc. * * * The word 'amount' refers to all exactions under whatever name and in the aggregate; it is used in the singular, not in the plural, and should not be otherwise interpreted."

Of special interest here is the 1938 decision of the Supreme Court of Montana in the case of Occidental Life Ins. Co. v. Holmes, 107 Mont. 48, 80 P. (2d) 383, where the employment of Montana's retaliatory law against a California company was involved. While the facts of such case made it unnecessary to employ the Montana retaliatory statute, the Supreme Court of Montana quoted approvingly from Life & Casualty Ins. Co. of Tennessee v. Coleman, 233 Ky. 350, 25 S.W. (2d) 748 when using the following language found at 80 P. 2d 383, l.c. 388:

"Equality is the result aimed at and is achieved when the ultimate taxes levied are equal, even though they are imposed by different arms of the respective state governments and are applied to different purposes."

In Employers Casualty Co. v. Hobbs, 152 Kan. 815, 107 P. 2d 715, l.c. 716, the Supreme Court of Kansas, in 1940, spoke as follows in relation to Kansas' retaliatory statute and similar statutes of other states:

"While the provisions of G. S. 1935, 40-253, our so-called retaliatory statute, and similar statutes of other states are designated as retaliatory clauses in insurance circles, the real purpose of these statutes is not retaliation but substantial equality and comity between states and countries. By these statutes states or countries intend to say to each other, we will treat you as you treat us. * * * The actual purpose of such legislation is to equalize the burdens imposed upon foreign and domestic corporations."

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CONCLUSION

It is the opinion of this office that a foreign insurance company licensed to do business in Missouri is prohibited, under Section 148.400 RSMo 1959, from deducting from premium taxes due Missouri amounts paid as ad valorem taxes on real estate the company owns in Missouri, and, other than for the purpose of computing premium taxes under a foreign premium tax statute which authorizes the deduction thereof, such real estate taxes are not to be taken into consideration in determining the aggregate burdens imposed by either Missouri or the foreign state when applying the provisions of the Missouri retaliatory law.

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

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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