INSURANCE: Under 375.180 the tax on net premiums is imposed upon
TAXES: the agent and may be recovered through the premium
STATE: charged from the state as purchaser of insurance.
Under 375.190 the tax on net premiums is imposed upon the purchaser and may not be recovered from the state as purchaser of insurance.

OPINION NO. 64 (1966)
430 (1965)

December 9, 1966

FILED
64

Honorable Robert D. Scharz
Superintendent of Insurance Division
State of Missouri
Jefferson City, Missouri

Dear Mr. Scharz:

Reference is made to your request for an official opinion from this office in regard to three questions concerning the opinion of this office rendered to C. R. Hardy on February 16, 1956. The prior opinion concluded that the state is not liable for a tax of 5 per cent levied on premiums for policies insuring property at the Missouri State Penitentiary, said policies having been issued by an insurance company not admitted to do business in this state. A consideration of the questions raised by you has caused this office to re-examine the conclusions of the prior opinion.

Section 375.010, RSMo, (all statutory references herein are to the Missouri Revised Statutes as amended) requires all insurance companies to procure a certificate of authority from the Superintendent of Insurance before transacting any insurance business in this state. However, insurance may be placed in companies not authorized to do business in this state pursuant to Section 375.170. The relevant provisions of Section 375.170 are as follows:

> "The superintendent of insurance 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 lines of insurance in companies not admitted to do business in this state * * * ."

The following provisions of Section 375.180 are applicable to the insurance placed by an agent pursuant to a certificate of authority granted under Section 375.170.

> "Every agent so licensed shall report * * * to the superintendent of insurance * * * the amount of net premiums received by him for such insurance placed in companies not admitted to do business in this state and shall pay a tax of five per cent thereon * * * ."

Thus, a licensed agent may be granted a certificate of authority to place lines of insurance in companies not admitted to do business in this state. The agent must pay a tax of 5 per cent on the net premiums received by him for the insurance business transacted under the certificate of authority. The certificate of authority is issued to a previously licensed agent rather than to the company or to the purchaser of insurance. The statute does not impose the tax upon the company issuing the policy or upon the person buying such policy. The tax is imposed directly upon the licensed agent who collects premiums for insurance placed by him in companies not admitted to do business in this state pursuant to the certificate of authority granted to the agent for this purpose.

The prior opinion of this office concluded that the state is not liable for the tax imposed by Section 375.180. This conclusion appears to have been premised upon the thought that the tax was being imposed upon the purchaser of the policy. This premise was erroneous. As noted above the tax is imposed upon the agent, and the agent can set the purchase price, including taxes, that a purchaser will have to pay for an insurance policy. The taxes are included as part of the total amount of the premium for the policy and the purchaser is not paying the taxes as such. Therefore, if the state is a purchaser of an insurance policy the agent can recover all of his costs through the premium charged including the taxes imposed on the agent pursuant to Section 375.180. See City of St. Louis v. Smith, 114 S.W.2d 1017. Pursuant to these views, the prior opinion of this office is withdrawn.

Your questions seeking clarification of the prior opinion refer without comment to Section 375.190 as well as 375.170 and 375.180.

Section 375.190 sets forth provisions for a person to obtain insurance in foreign companies not authorized to do business in this state for himself, a firm of which he is a member or a corporation in which he is interested. The Superintendent of Insurance may grant a license to a person for this purpose upon compliance with the statutory provisions. Such license is issued directly to the insured and the licensee may obtain insurance thereunder without going through a licensed agent. The provisions of Section 375.190 do not license a company or an agent. The purchaser of insurance under this section is liable for a tax of 5 per cent upon the net premiums paid for such insurance.

Honorable Robert D. Scharz

The prior opinion of this office was concerned with the purchase of insurance for the Missouri State Penitentiary pursuant to the provisions of Sections 375.170 and 375.180. Conceivably, the Director of the Department of Corrections could obtain a license from the Superintendent of Insurance pursuant to Section 375.190 authorizing the Department to obtain insurance for the Missouri State Penitentiary from foreign companies not authorized to do business in this state. As noted above a tax of 5 per cent on the net premiums is imposed upon the purchaser of such insurance. In State ex rel. Missouri Portland Cement Co. v. Smith, 338 Mo. 409, 90 S.W.2d 405, the Supreme Court held that the sales tax was not applicable to the purchase of materials by the State Highway Commission. This conclusion of the Court was based upon the principle that excise taxes are not applicable to the state and its subdivisions unless the statute imposing such tax specifically applies the tax to the state and its political subdivisions. Under the principles followed in the cited case, the 5 per cent tax on net premiums imposed on the purchasers of insurance pursuant to the provisions of Section 375.190 is not applicable to the state and its subdivisions.

CONCLUSIONS

The 5 per cent tax on net premiums for insurance placed in companies not admitted to do business in this state pursuant to Sections 375.170 and 375.180, RSMo, is imposed directly upon the licensed agent who holds a certificate of authority for such purpose. The tax may be included by the agent in the premium charged for such insurance and may be recovered from the State of Missouri and its political subdivisions as purchasers of such insurance.

The 5 per cent tax upon net premiums for insurance obtained from companies not authorized to do business in this state pursuant to Section 375.190, RSMo, is imposed directly upon the purchaser of such insurance, and the State of Missouri and its political subdivisions are not liable for the tax as purchasers of such insurance.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Thomas J. Downey.

Yours very truly,

NORMAN H. ANDERSON
Attorney General