INSURANCE COMPANIES -- PREMIUM TAXES -- DEDUCTIONS.

: Under Senate Bill #98 insurance companies may take deductions for the whole preceding year in computing the amount of privilege or license tax they are required by Secs. 6098a and 6098b to pay for the privilege of doing business in this State during the ensuing year. Returns prepared by the Insurance Department for the use of companies in such computation should provide for deductions to be taken for the whole of the preceding year to the year in which such privilege tax must be paid.

FILED
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March 20, 1947

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Honorable Owen G. Jackson
Superintendent
Division of Insurance
Jefferson City, Missouri

Attention: Honorable Ralph C. Lashly

Dear Superintendent Jackson:

This will acknowledge your letter of recent date, requesting an opinion from this Department respecting the deductions to be taken by insurance companies in computing premiums of 1946 on payment of their premium taxes in 1947, as Senate Bill #98 applies to the subject. Your letter requesting our opinion is as follows:

> "Paragraph (b) of the paragraph titled 'Deduct:' of the Tax Return Schedule, copy of which is attached hereto, reads as follows:
>
> > "'(b) All Dividends Allowed Policyholders during last six months of 1946 except those Applied to Purchase Paid-Up Additional or Annuities.'
>
> "Does Senate Bill No. 98 restrict deduction which may be taken by the insurance company to the last six months of 1946, or are they entitled to deductions for the entire year?"

Your request for this opinion seems to be based upon the question of the interpretation of the meaning and effect of the tax return schedule under the paragraph beginning with the word "Deduct", comprised of sub-paragraphs (a) and (b), and ending with the blank for net premiums in dollars, as to whether the deductions that may be taken by the insurance companies should include the whole of the year

1946 or are confined to the last six months of 1946, rather than an outright opinion respecting the meaning and effect of Senate Bill #98, itself. The interpretation and construction to be given to the tax return schedule mentioned, however, will necessarily include the construction of said Senate Bill #98 as to its meaning and effect, so that we believe it proper and helpful to here quote Senate Bill #98, which is as follows:

> "Section 1. Every insurance company or association organized in, or admitted to this state, which is now, or which may be hereafter required to pay a tax upon its premium receipts under any law of this state, may deduct, in computing the direct premiums received by it in this state, in addition to all other credits allowed by law, amounts returned to or declared and held for the benefit of the policyholders in this state upon which an agreed per-centum of interest is paid quarterly, semi-annually or annually, and any amounts returned to the holders of policies on risks located in this state, as unabsorbed premiums or dividends, whether paid in cash, or applied in reduction of premiums payable by such policyholders."

The paragraph of the tax return schedule under which the deductions may be taken by the insurance companies in making up their tax returns for the payment of premium taxes, under the title of "Deduct" on the face of the tax return schedule is as follows:

"Deduct:

> "(a) Dividends Allowed Policyholders but Retained by the Company in Payment of Premiums during first six months of 1946 ....$____
>
> "(b) All Dividends Allowed Policyholders during last six months of 1946 except those Applied to Purchase Paid-Up Additional or Annuities .....$____
>
> "Total Divident Deductions .....$_____

Senate Bill #74 was passed April 28, 1945. This Act was an amendment of Article XII, Chapter 37, R.S. Mo. 1939, on the subject of "Taxation of Insurance Companies", by adding three sections immediately after Section 6098, to be known as Sections 6098a, 6098b and 6098c. There was no repealing clause in Senate Bill #74 repealing any of the sections of Article XII, Chapter 37, R.S. Mo. 1939. Later, however, House Bill #871 repealed Section 6098a of Senate Bill #74, and a new section, numbered 6098a, was enacted in lieu thereof, which became effective July 1, 1946. Also, later, Senate Bill #371 repealed Section 6098b of Senate Bill #74, and a new section numbered 6098b was enacted in lieu thereof, which also became effective July 1, 1946. Senate Bill #74 and Senate Bill #371 are printed and may be found in the Index of the Senate Bills Truly Agreed to and Finally Passed of the 63rd General Assembly, January 3, 1945, to July 8, 1946. House Bill #871 is printed and may be found in the Index of the House Bills Truly Agreed to and Finally Passed, 63rd General Assembly, January 3, 1945 to July 8, 1946. These new enactments, Sections 6098a and 6098b as they now exist are the law of this State on the subject, and are as follow, to-wit:

House Bill #871:

"Section 6098a. Every insurance company or association organized under the laws of the State of Missouri and doing business under the provisions of Articles 2, 7 and 17, of Chapter 37, Revised Statutes of Missouri, 1939, and every mutual fire insurance company organized under the provisions of Article 6, Chapter 37, Revised Statutes of Missouri, 1939, shall, as hereinafter provided, annually pay, beginning with the year 1945, a tax upon the direct premiums received by it from policyholders in this state, whether in cash or in notes, 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 (2%) per annum, which amount of taxes shall be assessed and collected as hereinafter provided, and shall be in lieu of all taxes upon intangible personal property owned by such insurance companies or associations: PROVIDED, that fire and casualty insurance companies or associations shall be credited with cancelled or returned 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."

Senate Bill #371:

"Section 6098b. Every such company shall, thirty days after the effective date of this Act, for the year 1945, and on or before the first day of March in each year thereafter, make a return verified by the affidavit of its President and Secretary, or other chief officers, to the Superintendent of the Insurance Department (or to the Director of Revenue, if provided by law) stating the amount of all direct premiums received by it from policyholders in this state, whether in cash or in notes, during the year ending on the 31st day of December next preceding. Upon receipt of such returns the Superintendent of the Insurance Department (or the Director of Revenue, if provided by law) shall verify the same and assess the tax upon the various companies on the basis and at the rate provided in the next preceding section, taking into consideration deductions and credits allowed by law. Immediately thereafter the Superintendent of the Insurance Department of the State of Missouri (or the Director of Revenue, if provided by law) shall notify the companies of the amount of taxes respectively due from them, and such taxes shall be paid into the State Treasury (or if otherwise provided by law such taxes shall be paid to the Director of Revenue), for the year 1945, within sixty days after the effective date of this Act, and on or before the first day of May in each year thereafter. If not so paid the State Treasurer (or the Director of Revenue, if provided by law) shall certify such fact to the Superintendent of the Insurance Department who shall thereafter suspend such

> delinquent company or companies from the further transaction of business in this state until such taxes shall be paid, and such companies shall be subject to the provisions of Sections 6096, 6100, 6101, 6102, 6103 of Article 12, Chapter 37, Revised Statutes of Missouri, 1939. Upon receiving said money the State Treasurer shall receipt one-half thereof into the General Revenue Fund of the state, and one-half thereof to the credit of the County Foreign Insurance Fund for the purposes set forth in Section 6095 Revised Statutes of Missouri, 1939."

Thus we will observe that Section 6098c and the emergency clause in Senate Bill #74 were not disturbed and still remain sections of that Bill which, as hereinbefore stated, are as to Sections 6098a and 6098b, amendments of Article XII of Chapter 37, R.S. Mo. 1939. Therefore, it will be further observed that Sections 6098a and 6098b as enacted by House Bill #871 and by Senate Bill #371, respectively, and hereinabove quoted, upon the repeal by said House Bill #871 and Senate Bill #371, respectively, of Sections 6098a and 6098b of Senate Bill #74 such new enactments are now a part of Article XII, Chapter 37, R.S. Mo. 1939, and are to be read and understood as the present existing law of this State on the subject.

Senate Bill #74 was passed with an emergency clause. We believe it valid. We observe here the established rule of construction that every law passed by the Legislature is presumed to be constitutional until declared otherwise by proper authority. So, then, taking the emergency clause as valid it would appear that Senate Bill #74 went into effect on April 28, 1945.

We believe that in the construction of the effect of the tax return schedule hereinabove referred to, as to it specifying the time meant under which deductions may be taken by insurance companies in making their returns under "Deduct" therein, and along with the same, the construction of said Section 6098a and Section 6098b and Senate Bill #98, and their meaning being understood, it may be con-

clusively said to be that said Section 6098a, as a part of said Senate Bill #74, and as a part of Article XII, Chapter 37, R.S. Mo. 1939, is the section creating the obligation upon the part of domestic insurance companies to pay a like premium tax heretofore and still required to be paid by foreign insurance companies in this State; that Section 6098b, also as a part of said Senate Bill #74, and, also, thereby a part of Article XII, Chapter 37, R.S. Mo. 1939, is the measuring standard prescribing how the returns shall be made for the payment of the tax for the ensuing year, and using the amount of the premiums collected during the preceding year as such standard for fixing the amount of the tax to be paid for the privilege of doing business during the ensuing year; that Senate Bill #98 affects said Sections 6098a and 6098b only as to the identification and amount of deductions which insurance companies may take in computing the tax under said Section 6098b. It does not change the method or manner which shall be used as is prescribed by said Section 6098a in establishing the tax nor said Section 6098b in the manner of making the return. Said Senate Bill #98, we think, permits deductions for dividends over the entire year 1946, or any like previous year, as the means of fixing the net premiums upon which the privilege tax for the right of doing business by an insurance company is fixed for the year 1947, or any like ensuing year.

Prior to the enactment of Senate Bill #74, domestic insurance companies had never been required to pay a premium tax for the privilege of doing business in this State. It will be noted that Section 6098a prescribes that domestic insurance companies "shall, as hereinafter provided, annually pay, beginning with the year 1945, a tax upon the direct premiums received by it from policyholders in this state * * *, at the rate of two per cent (2%) per annum, * * * ".

Section 6098b very clearly, we believe, reveals the legislative intent in the enactment of both Sections 6098a and 6098b when said Section 6098b states:

> "Every such company shall, thirty days after the effective date of this Act, for the year 1945, and on or before the first day of March in each year thereafter, make a return verified by the affidavit of its President and Secretary, or other chief officers,

> to the Superintendent of the Insurance Department (or to the Director of Revenue, if provided by law) stating the amount of all direct premiums received by it from policyholders in this state, whether in cash or in notes, during the year ending on the 31st day of December next preceding. * * * ".

to be that the whole of the previous year's taxes collected by insurance companies should be the standard of measurement of the tax to be paid the ensuing year by such companies for the privilege of doing business. Section 6098b uses these quoted significant words in determining the period of the collection of the taxes as "during the year ending on the 31st day of December next preceding". That statement could serve no other office or purpose whatsoever, as we view it, except to be and become the measuring standard for the fixing of the next year's excise tax. The State does not do a credit business in requiring the payment of license fees by licensees for the privilege of transacting business in the State. If it did so, and required the payment of a license tax at the end of the year after any person, corporation or other entity had exercised the privilege of transacting business in the State instead of requiring the payment of a license tax before they may begin the transaction of business in the State, many of such enterprises would perhaps cease transacting business in the State and withdraw from the State at the end of the license year rather than pay a new license tax. The requirement of the payment of the license tax before any licensed business may be transacted in the State is the only means and method whereby the State may supervise and control the conduct of persons or corporations so transacting such business. So it seems to be conclusive that the Legislature intended for the measuring and determining of the amount of tax to be paid by persons or corporations for the privilege of transacting business in this State was to be and is prospective and not retrospective.

If, then, Section 6098b fixes the amount of the previous year's collection of taxes as the measuring rule and standard whereby the amount of the tax to be paid by the licensee for the ensuing year covers the whole year up to December 31 of such "preceding year", and it does, it would be but fair and just, reading said Sections 6098a

and 6098b and Senate Bill #98 together, to say that if Section 6098b fixes the whole of the previous year as the basis of premium collections that the company should have the same period in which to take advantage of the deductions allowed by Senate Bill #98 for the whole of the year preceding the payment of the license tax in which to apply such deductions.

So construing Senate Bill #98 along with said Sections 6098a and 6098b, we believe it may reasonably bear no other construction. Said Senate Bill #98 in treating of the right of such deductions speaks of insurance companies or associations "which may be hereafter required to pay a tax upon its premium receipts under any law of this state" certainly does mean and refer to Sections 6098a and 6098b. These sections are the only laws in this State, of which we are advised, which require the payment by an insurance company of a tax upon its premium receipts. Then said Senate Bill #98 states that such insurance companies or associations "may deduct, in computing the direct premiums received by it in this state, in addition to all other credits allowed by law, amounts returned to or declared and held for the benefit of the policyholders in this state upon which an agreed per-centum of interest is paid quarterly, semi-annually or annually, and any amounts returned to the holders of policies on risks located in this state, as unabsorbed premiums or dividends, whether paid in cash, or applied in reduction of premiums payable by such policyholders." Thus, the insurance companies are required to compute the privilege tax to be paid for the ensuing year upon "its premium receipts under any law of this state" and if so, then we believe it is just as clearly stated and intended in said Senate Bill #98 that they may make the deductions for the same period of time in which they must compute the direct premiums received by them, that is to say, during the whole of the year preceding the payment of the tax. This construction of the statutes being discussed is further supported, we believe, by the requirement in Section 6098a that the payment of the tax "beginning with the year 1945" should be computed on the premiums received up to and including December 31st of the preceding year, and having observed that Senate Bill #74 was passed with an emergency clause, and treating said emergency clause, as we believe we must, as valid, then the computation of the amount of the premiums upon which the tax for 1945 would be paid includes the whole of the year 1944, and so on for successive years in like fashion.

Senate Bill #98 does not, in anywise, disturb that part of Section 6098a or any other provision thereof, except to increase the deductions to be allowed in the making up of a return. It appears that under the terms of Senate Bill #98 insurance companies would have the right to deduct dividends paid but retained by the company in payment of premiums and dividends allowed policyholders, and all dividends allowed policyholders, except those applied to purchase paid-up additional or annuities during the whole year of 1946.

The tax return prepared by the Division of Insurance submitted to us does not comply with said Senate Bill #98 in the deductions allowed for the full year of 1946, in measuring the privilege tax for 1947, and is erroneous to that extent. It should be changed to comply with the terms of said Senate Bill #98 in such regard.

The premium tax in previous years required of foreign insurance companies, and now required of them by the terms of Article XII, Chapter 37, R.S. Mo. 1939, and by reason of the amendments heretofore noted and discussed and now required of domestic insurance companies, is not a tax on the premiums collected themselves. It is a tax upon the privilege of either foreign or domestic insurance companies to do business in this State.

The question of whether the imposition of a premium tax imposed upon insurance companies, such as is provided in said Section 6098a is a tax upon the premiums collected themselves or is a privilege tax paid by the companies for the privilege of transacting business in this State, was before our Supreme Court in the case of Massachusetts Bonding & Insurance Company vs. Chorn, 274 Mo. 15, 201 S.W. 1122. The Court held that the tax imposed is a privilege tax and is not a tax upon the premiums. The Court, l.c. 1124, on the point, said:

> "The thing taxed in this case is the right to transact the business of various kinds of so-called insurance, relating, among other things, to the life, health and safety of individuals, indemnity against liability of employers to employes injured in their service, and loss incurred by reason of their defaults. All these kinds are included under the general name of insurance, and, so far as this appellant is concerned, are under

> the jurisdiction of the insurance department of the state by which the tax is ascertained and assessed. The payment of the tax entitles it, under the laws of the state, to transact this business in its capacity as a corporation. The amount of the tax is fixed at 2 per cent. on 'the premiums received, whether in cash or in notes, in this state, or on account of business done in this state.' * * * ".

The decisions of the Courts of other States of the Union are to like effect as the above cited case from our Supreme Court on similar tax laws, on the particular point that such premium taxes as are provided for in our said Sections 6098a and 6098b are a privilege tax, imposed solely for the privilege of doing business in the ensuing year.

The Supreme Court of the State of Kansas in the case of McNall vs. Metropolitan Life Insurance Company, 70 P. 604, on the question here involved, l.c. 605, among other things, said:

> "* * * The tax collected in 1899 was not levied on business done in the previous year. The amount of the premiums collected during the year before was used as a basis for determining the amount the company ought to pay for the privilege of writing insurance in this state for the subsequent year."

The Supreme Court of the State of Montana holds in like effect. The Supreme Court of that State had before it the case of State vs. J. C. Maguire Construction Company, 125 P. (2d) 433. The Court, l.c. 435, on the question said:

> "The controversy here is as to the period of business activity covered by the tax required to be paid in each year. The language of the Act is clear and there can be no question of what was intended by the legislature. It provides that every corporation shall annually pay a license fee for carrying on business in the state, the amount of which is determined by taking a percentage of the preceding year's income as the measure. * * * * * * * * * * * * * *

> The result is that every corporation, domestic or foreign, doing business in the state is required each year to pay a tax for the privilege of doing business that year, the amount of which is fixed at a per centum of the amount of the net income received by the corporation during the preceding year from all Montana sources. The tax is imposed upon the privilege of doing business and not upon the income derived from the business done."

If, then, the premium tax imposed upon insurance companies is an excise or privilege tax for the right to transact business in this State, and the return as is provided in said Section 6098b shall be made "stating the amount of all direct premiums received by it from policyholders in this state whether in cash or in notes, during the year ending on the 31st day of December next preceding * * * * " then we will have no difficulty, we think, in arriving at the proper construction of the terms of Senate Bill #98 as to the deductions and the time for which deductions may be made in the making of the return by any insurance company. Senate Bill #98 provides that "Every insurance company or association organized in, or admitted to this state * * *, may deduct, in computing the direct premiums received by it in this state * * * amounts returned to or declared and held for the benefit of the policyholders in this state upon which an agreed per-centum of interest is paid quarterly, semi-annually, or annually, and any amounts returned to the holders of policies on risks located in this state, as unabsorbed premiums or dividends, whether paid in cash or applied in reductions of premiums paid by such policyholders." So also, if said Section 6098a is the measuring stick whereby it is to be determined what the tax for the ensuing year shall be, as applied to the premiums collected for the previous year for the privilege of transacting business in the ensuing year, we think it would be necessary, and that it was the intention of the Legislature in passing Senate Bill #98, to apply the deductions provided for in Senate Bill #98 to the whole of the period during which the taxes were collected in the previous year as the measuring stick under Section 6098a for the correct computation of the tax. In other words, taking for example the years specified in the tax return schedule of 1946 and 1947, the deductions provided for in Senate Bill #98 would apply to

the whole of the year 1946, taking that year's premium collections as the measuring standard for the computation of the privilege tax for the next ensuing year, 1947, and said Senate Bill does not restrict such deductions to the last six months of 1946.

CONCLUSION.

It is, therefore, the opinion of this Department that:

1) Senate Bill #98 does not restrict deductions which may be taken by an insurance company to the last six months of 1946, as the measuring stick upon the premiums collected by any such company in the year 1946, by which the excise or privilege tax for doing business in this State in the ensuing year 1947, is to be computed, but that such deductions as are provided by law shall be taken for the entire year 1946.

2) That the form of the tax return schedule under the paragraph "Deduct" does not express or contain the language, effect, purpose and meaning of Senate Bill #98 in that it restricts the deductions to be taken by insurance companies making such return to the last six months of 1946, in certain instances, whereas the tax return schedule should express the right for any insurance company to take such deductions as are provided by law during the whole of the year 1946.

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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