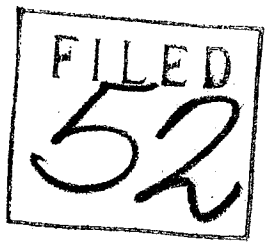
INSURANCE: Premium tax provided for in Section 148.340 RSMo
TAXATION: 1949 is to be levied against foreign fraternal benefit societies which have reincorporated as legal reserve, level premium life insurance companies, only to the extent that the contracts remaining in force, or issued by such reincorporated companies, are devoid of assessment liability.

June 17, 1954



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

Dear Mr. Leggett:

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

> "The Homesteaders Life Company of Des Moines, Iowa, and the Security Benefit Life Insurance Company of Topeka, Kansas, both operated as Fraternals for a long period of years, during which time they were licensed to do business in this State, however, about four years ago they reincorporated as Legal Reserve Life insurance companies without any fraternal benefits other than those specified in the original membership contract and, of course, they had a considerable volume of fraternal business on which they continued to collect premiums.
>
> "Since the change was made, we have been unable to collect any premium tax inasmuch as we assessed the Companies on the total amount of premium received. On the other hand, the Companies claim that all premium received from the fraternal contracts are exempt under the Missouri Insurance Laws.

> "We are handing you herewith our entire file relative, together with an Opinion of the Attorney General of Illinois who filed suit to collect tax based on the fraternal premium income of the two companies named above as well as other companies and, if the writer remembers correctly, all the companies named in their suit are doing business in this State at the present time.
>
> "We would appreciate an opinion as to whether or not the tax is to be levied on the entire premium income of the Companies or only on the business written since reincorporation."

Facts before us disclose that the two companies involved, prior to their reorganization, operated in their respective States and in Missouri, as fraternal benefit societies having a lodge system with ritualistic form of work; that such companies since reorganization carry on an insurance business as legal reserve, mutual, level premium life insurance companies, and continue to be licensed in Missouri. In this opinion we must determine if Missouri's premium tax statute, Section 148.340 RSMo 1949, is to be applied to consideration received by the two companies on contracts still in force in Missouri but written prior to reorganization, and the character of new policies must also be comprehended. Section 148.340 RSMo 1949, provides:

> "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."

No tax under the above quoted statute was levied against the two companies involved prior to their reorganization since such a tax was not levied against domestic fraternal benefit societies. Insofar as Section 148.340 RSMo 1949 is applied to "premiums received," by a foreign insurance company doing business in Missouri, as distinguished from "assessments" touching policies written by a foreign insurance company, the Supreme Court of Missouri in the case of Bankers' Life Co. v. Chorn, 186 S.W. 681, l.c. 684, spoke as follows:

> "* * * Having in mind this intrinsic distinction between the purpose and object of the section under review (R.S. 1909, Sec. 7099) this court, in banc, in the decision referred to, decided that the Legislature, in imposing this duty of 2 per cent. upon the 'premiums' received by foreign insurance companies, merely exercised its power 'to impose a license or occupation tax on insurance companies'; and hence the enactment for that purpose became properly part and parcel of the special code provided by our law for regulating the business of foreign and domestic insurance, and that the terms of the act disclosed, however, that it was only applicable to companies insuring for fixed or level premiums, and not to those doing business on the assessment plan. * * *" (Underscoring supplied.)

In dealing with this particular tax statute the Supreme Court of Missouri in Young v. Life Insurance Co., 277 Mo. 694, l.c. 699, spoke as follows:

> "No such tax was demandable, under the statutes and decisions of this State, by any company doing business on the assessment plan."

Honorable C. Lawrence Leggett

The two cases cited above involving, as they did, a construction of language now found in Section 148.340 RSMo 1949, clearly indicate that the statute is not to be directed to a foreign company's income derived from assessments levied against holders of insurance contracts, but will only affect premium income of such companies growing out of fixed, level premium charges, which may not be further increased by an assessment of any kind. The contracts issued and outstanding by the two companies involved are the best evidence of their character as assessment or level rate and non-assessable contracts. In this opinion we do not undertake to construe the terms of any particular contracts issued or to be issued by the companies.

In view of the construction placed by the Supreme Court of Missouri on language found in Section 148.340 RSMo 1949, we feel that the principal inquiry is best disposed of by resting a ruling on the character of the contract issued, rather than to take a circuitous route exploring the reincorporation of the fraternal benefit societies into legal reserve, level premium life companies and then attempting to exempt their former assessment contracts on the theory that their terms have not been changed by the societies' reincorporation.

The principal inquiry found in the fourth and last paragraph of the request for this opinion seems to indicate that all business written by the two companies prior to reincorporation was written on an assessment basis. If such contracts are continued on an assessment basis after reincorporation they of course will not add to premium income on which the companies will have to pay the tax provided for in Section 148.340 RSMo 1949.

CONCLUSION

It is the opinion of this office that the premium tax provided for in Section 148.340 RSMo 1949 is to be levied against foreign fraternal benefit societies which have reincorporated as legal reserve, level premium life insurance companies, only to the extent that the contracts remaining in force, or issued by such reincorporated companies, are devoid of assessment liability.

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

Very truly yours,

John M. Dalton
Attorney General

JLO'M/vtl