INSURANCE DEPARTMENT: Insurance Companies may take credit
IMPOUNDED FUNDS: in their 1943 tax return under Sections 6094, 6095, R. S. Mo. 1939, for impoundings ordered returned to policyholders.

March 31, 1944

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Hon. Edward L. Scheufler
Superintendent of Insurance
Jefferson City, Missouri

Dear Sir:

We have for attention your letter of March 29th, 1944, in which you request the opinion of this department, and attached to your letter is a letter, dated March 29th, 1944, from Mr. Homer H. Berger, attorney for the insurance companies involved in your request.

From the two letters we have the statement, and, upon the assumption of the correctness of the facts therein stated we base our opinion; the letters reading as follows:

Your letter:

> "A number of stock fire insurance companies, parties to the Federal 16-2/3% rate case, have included in their Premium Tax Returns for the year 1943 the amount of impoundments held to belong to the policyholders by the Federal Court. These returns are filed pursuant to Section 6095, Article 12, Chapter 37, Revised Statutes of Missouri, 1939, and credit is sought to be taken under the provisions of Section 6094, Article 12, Chapter 37, R. S. Mo. 1939.
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> "Transmitted herewith is a copy of a letter from Mr. Homer H. Berger, Counsel for the fire insurance companies claiming credit as above stated, which sets forth the position the companies are taking in regard to this matter.

"Will you please advise this Department whether or not stock fire insurance companies, parties to the Federal 16-2/3% rate case, can take credit under the provisions of Section 6094, R. S. Mo. 1939, for the impounded funds in their Premium Tax Returns for the year 1943?"

Mr. Berger's letter:

"With reference to your letter of March 9, 1944, addressed to the Stock Fire Companies filing tax schedules for the year 1943 in Missouri, claiming credit for impounded premiums,

"On behalf of these companies we desire to assert their right to claim as credit on their 1943 tax schedules the impounded premiums that were ordered by the federal court to be returned to the policyholders and belonging to policyholders under the decree of August 14, 1940, which became final January 12, 1943. These funds were deposited with the Custodian of the Court under an interlocutory injunction dated July 3, 1930. In 1931 the Insurance Department ruled that these companies must include in their tax returns for 1930 and the years during which impoundings were made the funds impounded. This was done and tax paid thereon.

"In 1936 following the entry of the decree of February 1, 1936, which distributed the impounded funds 20% to the policyholders and 80% to the companies on policies effective prior to May 1, 1935, and 33 1/3% to the policyholders and 66 2/3% to the companies on policies effective after May 1, 1935, the companies took credit for the 20% and 33 1/3% paid to the policyholders in their 1936 tax return.

"The amount claimed in the 1943 return is the balance of these impounded funds which the Court in the decree above referred to in 1940 found to be owned by the policyholders.

"We submit that in 1943 when this decree of 1940 became final that the balance of the funds in the hands of the Custodian became the property of the policyholders and was paid to them though they are not now actually yet in possession.

"As the matter stands under the decision of the Federal Court, these funds were never premiums in the hands of the companies and now belong to the policyholders.

"We are advised that as to the 10% excess collections these were taken as credit on tax returns by the companies in 1929, 1930, 1931, 1934 and 1935, and the companies involved in the 16 2/3% rate litigation in the American Constitution Case, those funds were taken as a credit in 1938. So the interpretation of the Department at all times has been to permit the impounded funds when determined by the Court to belong to the policyholders as deductions in the year of determination as cancelled and returned premiums.

"We have not been able to find any decision squarely in point dealing with impounded funds. We feel, however, that State ex rel National Life Ins. Co. vs Hyde, 292 Mo. 342 is exactly in point and the theory upon which that case is decided is equally applicable here.

"In view of the fact that under Section 6095 the State Treasurer collects these taxes, we are urgently requesting that you submit to the Attorney General of Missouri this question being whether the companies can take

> as a credit under Section 6094 the impounded funds in their premium tax returns for 1943."

The question is as stated in the last paragraph of your letter, viz:

> "Will you please advise this Department whether or not stock fire insurance companies, parties to the Federal 16-2/3% rate case, can take credit under the provisions of Section 6094, R. S. Mo. 1939, for the impounded funds in their Premium Tax Returns for the year 1943?"

The only question involved in your request is whether the Superintendent of Insurance is legally authorized to give credit to approximately twenty-three of the insurance companies, in their 1943 premium tax return to be made in March, 1944, in compliance with Sections 6094, 6095, R. S. Mo. 1939, as returned premiums, the amount of impounded fund ordered to be paid to the policyholders by the Federal Court in a decree that became final January 12, 1943.

It is provided in Section 6094, supra, that "fire and casualty insurance companies or associations shall be credited with cancelled or return premiums actually paid during the year in this state." Does the impounded funds ordered to be paid by the insurance companies to the policyholders come within the meaning of the term "return premiums" as used in Section 6094, supra?

It is a cardinal rule of law that taxing statutes are to be strictly construed in favor of the taxpayer, and this rule was applied to the above section in State ex rel. National Life Insurance Co. v. Hyde, 292 Mo. 342. We think that Section 6094, supra, means, and it was the intention of the Legislature, that the insurance companies should pay a tax on the premiums that were actually received by the companies and should not be compelled to pay the tax on sums not actually <u>received</u> and <u>kept</u> by them.

We have not been able to find a case on all fours on the question involved, and it is only by analogy that we have arrived at a conclusion.

In the cas e of State ex rel. National Life Insurance Co. v. Hyde, 292 Mo. 342, l. c. 349, the court said:

> "'The court holds that such moneys not actually devoted as premiums to the business of the insurance company for the current year in which they are collected, but which are returned or otherwise abated or credited to the policyholders' account, are not subject to the two per cent tax enacted upon premiums received during the year.'"
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> (Italics ours.)

Also, in the case of Equitable Life Assurance Society v. Hobbs, 127 Pac. (2d) 477, 155 Kans. Rep. 534, l. c. 539, the court said:

> "The question of the right to deduct from premiums paid during a particular year any refunds of the consideration on cash refund annuity contracts is limited to that class of contracts, and not to all contracts for annuities. In the original hearing this court held that the considerations paid for such contracts were premiums under the act above mentioned providing for the tax. If the payments made were premiums for assessing tax, the portion not retained by the company but returned to the policyholder or the person designated by him was a proper item for deduction under the reasoning and holding in State, ex rel., v. Wilson, 102 Kan. 752, 172 Pac. 41. The parties are directed to make settlement consistent with the views herein expressed."

The above cases hold that the insurance companies should pay a tax only on the amounts actually received and retained by the companies and should not pay a tax on that part of the premium which is paid back to the policyholder. In other words, they are only required to pay a tax on the net premiums and not on the sums that may be returned to the policyholders by way of return premiums or dividends.

We think January 12, 1943, fixes the date on which the impounded funds became the absolute property of the policyholders, by reason of decree of the Federal Court becoming final on that date, and the insurance companies would be entitled to take credit in their March 1944 return to the Insurance Department. When the impounding began in 1930, under injunction order of the Federal Court, the Insurance Department ruled that the impoundings were premiums for assessing premium tax. In 1936 the Federal Court, by decree, ordered paid to the policyholders a portion of these impounded funds. Credit was taken by the companies in their 1936 tax return for the amount so returned. The amount being claimed as credit now is the balance of these impounded funds.

## CONCLUSION

It is, therefore, our opinion that the stock fire insurance companies, which were parties to the Federal 16 2/3% rate case, may take credit under the provisions of Section 6094, R. S. Mo. 1939, for the impounded funds in their premium tax returns for the year 1943.

Respectfully submitted,

COVELL R. HEWITT

RALPH C. LASHLY
Assistants Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

CRH/RCL:CP