

**Corporation License Tax—Returns of Insurance Companies—Computation of Tax Upon Business Transacted Prior to the Passage of the Act.**

In computing the amount of the license tax for an insurance company for the year 1921, the allowances and deductions provided for in Chapter 258 of the Laws of 1921 should be applied to the returns of the business transacted by such company for the year ending December 31, 1920.

J. W. Walker, Esq.,  
State Treasurer,  
Helena, Montana.

My dear Mr. Walker:

You have requested my opinion whether Subdivisions 5 and 6 of Section 2 and Subdivisions 5 and 6 of Section 3 of Chapter 258 of the Session Laws of 1921, amending Chapters 69 and 208 of the Session Laws of 1919, known as the Corporation License Tax Law, should be applied to returns of insurance companies for the year ending December 31, 1920, and therefore to the computation of the amount of the license tax for the current year, or whether they apply only to returns of such insurance companies covering business transacted after the passage of the Act.

Subdivisions 5 and 6 of Section 2 of Chapter 258 of the Laws of 1921 read as follows:

"Fifth. In the case of insurance companies, in addition to the above; the net addition required by law to be made within the year to reserve funds, and within the year on policy and annuity contracts.

"Sixth. And in addition to the foregoing deductions, every such corporation shall also have the right and privilege of making an additional arbitrary deduction of the sum of Two Thousand Five Hundred Dollars (\$2,500.00.)"

Subdivisions 5 and 6 of Section 3, supra, read as follows:

"Fifth. In the case of insurance companies, in addition to the above: (a) The net addition required by law to be made within the taxable year to reserve funds (including in the case of assessment insurance companies, the actual deposit of sums with State or Territorial officers pursuant to law as additions to guarantee of reserve funds); and (b) the sums other than dividends paid within the taxable year on policy and annuity contracts."

"Sixth. And in addition to the foregoing deductions every such corporation shall also have the right and privilege of making an additional arbitrary deduction of the sum of Two Thousand Five Hundred Dollars (\$2,500.00.)."

The precise question involved is whether, in computing the amount of the license tax to be collected by you from insurance companies, the above deductions should be allowed and made from the return

required as of March 1, 1921, of the business done by such companies for the year ending December 31, 1920.

The license tax provided by the Act is not a tax upon the business done during the previous year, but is a tax for the privilege of transacting business during the current year. The value of such privilege is measured by the amount of business the company applying for the license is transacting. The method of determining the amount of business being transacted is by ascertaining the amount of business transacted during the past year, through the return required to be filed not later than the 1st day of March. This constitutes the measuring rod of the business being transacted by a corporation, and hence, of the value of the privilege of transacting such business. The license tax law enacted in 1921 applies to the privilege of transacting business in 1921. The amount to be collected for 1921 is fixed in the law passed in 1921. If that amount had been increased, or a new tax provided, it could not be successfully maintained that such would not apply to the privilege of transacting business in 1921. Necessarily and logically the other provisions of the law apply as of the same time that the amounts charged as license fees apply. From this it follows that the provisions for allowances and arbitrary deductions apply in connection with the returns for the year 1920.

It is, therefore, my opinion that in computing the amount of the license tax for the year 1921, the allowances and deductions provided in the amendments to the Corporation License Tax Law contained in Subdivisions 5 and 6 of Section 2, and Subdivisions 5 and 6 of Section 3, Chapter 258 of the Session Laws of 1921, should be applied by you to the returns of insurance companies of the business transacted by such companies for the year ending December 31, 1920, and the license tax for the year 1921 should be computed accordingly.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.