

Insurance Companies, License, Tax Of. Life Insurance Companies, License, Tax Of. Dividends, to Policy Holders, License On. Premiums, License, On.

Life insurance companies may deduct from the gross amount of the premium collected the amount of "dividends" or "excess payments" credited to policy holders in reduction of premiums under the provisions of Sec. 4017, Revised Codes.

April 26, 1912.

Honorable C. M. McCoy,
State Auditor and Commissioner of Insurance, Ex-officio,
Helena, Montana.

Dear Sir:

I acknowledge receipt of your letter of March 16th. As you have been informed we did not make earlier reply because of the moving of the State Law Library.

In your letter you submit for my official opinion the question as to whether or not Insurance Companies doing business within the State of Montana are entitled to deduct from gross premiums collected in the State, amounts of so-called "dividends" or "excess payments" which are credited to policy holders in reduction of premium, in ascertaining the amount of license due from such insurance companies to the State under the provisions of Section 4017 of the Revised Codes of Montana.

This section provides, in substance, that all insurance companies shall procure a license authorizing them to transact business, and shall pay to the State Auditor for such license the following fees: For a license to collect in any one year premiums amounting to the sum of five thousand dollars, or less, One Hundred Twenty-five Dollars. For a license to collect in any one year premiums over the sum of five thousand dollars, the sum of twenty dollars for each and every one thousand dollars to be so collected."

The authorities hold that a franchise license, or excise tax, may properly be imposed by the state on insurance business, and that this tax or license, may be additional to the tax on property of the corporation, or on its receipts from its business.

22 Cyc., 1390 (4).

89 Mo. App. 379.

94 Wis. 248.

Most of the statutes of other states with reference to the licensing of insurance companies, provide for a tax upon either the gross or net premiums collected. Our statute, giving it the most favorable construction for the state, does not require the payment of a license upon more than the gross collections of the company in any one year. Under similar statutes examined, which provide for a tax according to the gross premium receipts of an insurance company, it has been held that they are taxable only upon premiums actually earned or received and retained by the company, excluding the amounts rebated from the stipulated amount of the premium.

37 CYC. 341.

Mutual Benefit L. S. Co. v. Commonwealth, 128 Ky. 174.

State vs. Ins. Co., 38 La. Annual, 465.

People ex Rel v. Miller, 177 N. Y. 515.

Fire Ass'n v. Love, 101 Tex. 376.

The case of Mutual Benefit Life Insurance Company v. Commonwealth, Supra, is the best considered case upon this subject that I have been able to find, and covers the state of facts contained in your

inquiry in every particular. The decision in this case further reviews the decisions of the courts of other states upon a similar subject. The facts in that case were: That during the years for which the tax was claimed, and for many years previous, the business of the defendant company was that of Mutual Life Insurance on the level premium plan. Each policy issued stipulated for the payment of an annual premium graduated for a given amount of risk according to the age of the insured at the date of the policy. The rate of premium was fixed at a figure higher than was, under ordinary circumstances, necessary or sufficient to meet the risk, but the insured could not be called upon to pay more than the rate so fixed; he might not be called upon to pay so much. After the first year, he was never called upon to pay the entire amount, but an abatement was made at the beginning of each year, the amount of which depended upon the calculations of the Actuary computed from the statement of the treasurer of the business of the preceding year, and in making this statement the treasurer always included in his figures, as though it had been received by the company, the amount of this abatement which had been made from the premiums of the preceding year, but which had not actually been received by the company. The amount of the abatement thus ascertained was then deducted from the amount of the premium stipulated for in the policy, and the balance only was collected and received by the company. These abatements are called on the books of the company "dividends to policy holders," or "surplus to policy holders." The Supreme Court of Kentucky in discussing this state of facts, said:

"In short the whole proceeding is merely a method by which the books of the company are made to show what would be the actual gross debtor and creditor account of the company, if the whole amount of the premiums was collected and a part was afterwards returned to the policy holders, while in fact it is neither collected nor returned. The reason for fixing the premium stipulated for at a higher rate than sufficient under ordinary circumstances to cover the risk is, of course, that the company may be strong enough to stand in case of extraordinary mortality among its members. It is a fallacy to suppose that the rule under discussion is that the policy holder pay his whole stipulated premium and receives his share of the dividend or distribution of surplus."

The 128 Ky. 185.

The Court further said:

"The difficulty which surrounds the appellant (Insurance Company) in this case rises out of its method of bookkeeping and its use of terms out of their ordinary significance. What really happened in their case was that the stipulated premium was much larger than the company actually needed to carry the risk under ordinary conditions, but if extraordinary conditions should arise the whole might be needed."

The system pursued by the insurance companies, seems to be, that

on the first premium or so, they collect a sufficient sum to meet contingencies of any given year in the future, and then abstain from collecting any further over-payments while the first remains on hand, or while same is not necessary to meet any extraordinary condition which may arise, and that in fact the amount of so-called "dividends" or "excess payments" are not collected by the insurance company from the policy holders, and it is further my opinion that in fixing the amount upon which the insurance company should pay its license under the provisions of Sec. 4017 of the Revised Codes, that such insurance company may properly deduct from the gross premiums collected the amounts of any abatement, or so-called "dividend" or "excess payment" to the policy holders, and that the amount of the license collected by you should be figured with this idea in view.

Yours very truly,

ALBERT J. GALEN,

Attorney General.