

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 23

INSURANCE - Taxation of employee contributions to insurance provided by employer-insurer;
STATE AUDITOR - Duty to interpret statutes relating to insurance;
STATUTORY CONSTRUCTION - Deference to administrative interpretation;
TAXATION AND REVENUE - Premium tax on employee contributions to insurance provided by employer-insurer;
WORDS AND PHRASES- "Direct premium income";
MONTANA CODE ANNOTATED - Sections 2-15-1903, 33-2-705.

Held: Contributions made by employees of an insurer to life and disability insurance plans provided by the employer-insurer are taxable as premium income under section 33-2-705, MCA.

8 July 1981

E. V. "Sonny" Omholt
State Auditor
S.W. Mitchell Building
Helena, Montana 59601

Dear Mr. Omholt:

You have requested my opinion on the following question:

Are employee contributions to life and disability insurance plans provided by an employer-insurer taxable?

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Montana law imposes an annual tax on premiums received by insurance companies. § 33-2-705(2), MCA. The tax is based on "direct premium income, including...all... consideration for insurance from all kinds and classes of insurance whether designated as a premium or otherwise, received by [an insurer]...on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana...." § 33-2-705(1), MCA. You have interpreted "direct premium income" to include the contributions that an insurance company receives from its own employees for insurance provided by the company as an employee benefit. As insurance commissioner, you are charged with the interpretation and enforcement of section 33-2-705, MCA. § 2-15-1903, MCA. Your interpretation, therefore, is entitled to great deference. See, e.g., Montana Power Co. v. Cremer, ___ Mont. ___, 596 P.2d 483, 485 (1979); In re Fligman's Estate, 113 Mont. 505, 510, 129 P.2d 627, 629 (1942).

I find no basis for overruling your interpretation. The insurance industry has submitted a memorandum citing five cases from other jurisdictions that it believes are contrary to your interpretation. However, each of those cases is distinguishable. California-Western States Life Insurance Co. v. State Board of Equalization, 151 Cal. App. 2d 559, 312 P.2d 19 (1957), and State Tax Commission v. John Hancock Mutual Life Insurance Co., 341 Mass. 555, 170 N.E.2d 711 (1960), deal with retirement annuity plans for employees, not with life and disability insurance. State Tax Commission, supra, and Williams v. Massachusetts Mutual Life Insurance Co., 221 Tenn. 508, 427 S.W.2d 845 (1968), deal only with an employer's contributions to employee benefits. In each of those cases, it was conceded that the employee contributions were taxable. 170 N.E.2d at 717, n.5; 427 S.W.2d at 848. In both Danna v. Commissioner of Insurance, 228 So.2d 708 (La. Ct. App. 1969) and Mutual Life Insurance Co. v. New York State Tax Commission, 32 N.Y.2d 348, 345 N.Y.S.2d 475, 298 N.E.2d 632 (1973), the courts relied on the insurance commissioners' interpretations of the particular statutory language in their jurisdictions.

In all of the cases cited, the courts distinguished between premiums for commercial insurance, which is sold to the public for a profit motive, and premiums for non-commercial insurance, which is provided to employees

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to further the employer-employee relationship. You have correctly stated that Montana's statute provides no basis for such a distinction. Direct premium income includes "consideration for insurance from all kinds and classes of insurance." § 33-2-705 (1), MCA. [Emphasis added.] By the plain meaning of Montana's statute, employee contributions are compensation received by an insurer for insurance. See Mutual Life Insurance Co. v. New York State Tax Commission, supra, 298 N.E.2d at 636-37 (Gabrielli, J., dissenting in part).

THEREFORE, IT IS MY OPINION:

Contributions made by employees of an insurer to life and disability insurance plans provided by the employer-insurer are taxable as premium income under section 33-2-705, MCA.

Very truly yours,

MIKE GREELY
Attorney General