"Sec. 6. The fair, cash market value of lands approved for sale under the provisions of this act shall be determined by the department. In no instance shall the consideration paid to the state be less than $50.00. If the applicant is not satisfied with the value determined by the department, within 30 days after the receipt of such determination he may submit a petition in writing to the circuit court of the county in which such lands are located and the court shall appoint an appraiser or appraisers as the court shall determine for an appraisal of said lands. Decision of the court shall be final." (MCLA 322.706)

The Department of Natural Resources has therefore properly insisted that the Federal Government compensate the State of Michigan for submerged lands which the Federal Government has indicated it intends to expropriate and lands which, in the process of utilizing, the Federal Government intends to fill creating unsurveyed fast land no longer subject to submergence and accompanying use by the general public for navigation, boating, fishing, or hunting.

FRANK J. KELLEY,
Attorney General.

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INSURANCE: Retaliatory Tax.

When applying the retaliatory tax provisions of the insurance code, the amount of tax imposed by a sub-entity of a foreign state upon a Michigan insurance company doing business in that state is included in the tax to be imposed on foreign insurance companies from that state doing business in Michigan. The computation of the retaliatory tax also include deductions, variances, and rates allowed by the foreign state to Michigan insurance companies.

Opinion No. 4874 May 22, 1975.

Daniel J. Demlow, Commissioner
Insurance Bureau
Michigan Department of Commerce
111 North Hosmer Street
Lansing, Michigan

You have requested my opinion on the following questions:

1. Does Section 476 of the Insurance Code of 1956, 1956 PA 218, § 476; MCLA 500.476; MSA 24.1476 apply when a sub-entity of a foreign state collects or imposes taxes on Michigan Insurance Corporations?

2. Should the Insurance Bureau take into consideration the deductions allowed by a foreign state to Michigan Insurance Corporations when applying Section 476, *supra,* to insurers incorporated in that state?

3. If the Insurance Bureau does consider the variance in deductions and rates between foreign states and Michigan, how should Section 476, *supra,* be applied?

Section 476 of the Insurance Code of 1956, 1956 PA 218, § 476; MCLA 500.476; MSA 24.1476 provides in pertinent part:

> "Whenever, by any law in force without this state, an insurance corporation, . . . of this state . . . is required . . . to make payment for taxes, . . . greater in the aggregate than is required by the laws of this state for similar foreign corporations . . . the insurance companies, . . . of such states . . . are hereby required as a condition precedent to their transacting business in this state, . . . to pay to the commissioner for taxes, . . . an amount equal in the aggregate to such charges and payments imposed by the laws of such other state upon similar corporations of this state . . ."

The statute cited, often referred to as a "retaliatory" or "reciprocal" tax law has been adopted in substance by nearly every state. To properly interpret the section, it must be recognized that the purpose of retaliatory tax laws is to protect domestic insurance companies doing business in other states. The statutes are not designed to generate revenue or to inflict a burden on foreign competitors, but are enacted with the desire of promoting parity in the taxing of insurance companies transacting business across state lines.

In determining whether to take into account a tax imposed by a sub-entity of a state, it is necessary to consider the relationship between municipality and state. In Michigan, this relationship has been stated as follows:

> " 'Municipal corporations are mere instrumentalities of the State for the more convenient administration of local government. Their powers are such as the legislature may confer, and these may be enlarged, abridged, or entirely withdrawn at its pleasure.' " [*Attorney General, ex rel Battishill* v *Township Board of Springwells,* 143 Mich 523, 532; 107 NW 87, 90-91 (1906)]

The United States Supreme Court expressed a similar relationship in *Barnes* v *Dist of Columbia,* 91 US 540, 544; 23 L Ed 440, 444 (1876) as follows:

> "A municipal corporation in the exercise of all its duties including those most strictly local or internal, is but a department of the State."

The prevailing national view regarding the relationship between a state and its municipalities has been stated in various treatises in the following terms:

> "A municipal corporation is generally regarded by the courts as a subordinate branch of the government of the state . . . It exercises delegated powers of government . . . It is a political division of the state and generally a creature of the legislature." [1 McQuillan, Municipal Corporations (3d ed), § 2.08, P 142]
>
> "In its governmental aspect, a municipal corporation or municipality is an agent, instrumentality, or political subdivision of the state; an arm, branch, or part of state government."
>
> [62 CJS, Municipal Corporations, § 3(b)(2), p 69]

The precise question of whether a premium tax imposed by sub-entity of a state should be considered a tax of the state was addressed to the

New York Supreme Court in *John Hancock Mutual Life Insurance Co* v *Pink*, 276 NY 421, 12 NE 2d 529 (1938). The New York Court there held that a premium tax imposed by the City of New York was a state tax since the tax arose by virtue of legislative enabling acts for valid state purposes, to wit: the promotion of public health and welfare. Accordingly, the court held that in imposing the tax, the city was acting as an agent of the state.

It is therefore my opinion that the proper application of Section 476, *supra*, includes the consideration of any taxes imposed upon Michigan insurers by a municipality of any foreign state.

Your second question regarding the consideration of credits and deductions allowed Michigan insurers in foreign states but not specifically provided for in the Michigan Insurance Code can also be answered in view of the intent of Section 476, *supra*. As previously indicated, the purpose of a reciprocity tax is to place the same total burden on a foreign insurer that its state places on Michigan insurers doing a like business in that state. Accordingly, unless the credits and deductions recognized by foreign states are similarly recognized in Michigan, the total burden on a foreign insurer doing business in Michigan would be greater. Such an application would violate the express language of Section 476 which requires a foreign insurer to pay "an amount *equal in the aggregate*" as is charged Michigan insurers transacting business in that state. The leading treatise on the subject of insurance discusses this problem as follows:

> "In determining whether the local state may act under its retaliatory law it is necessary to determine the actual operation of the law of the foreign state. To determine whether a retaliatory tax is due, *the total exaction must be taken into account* irrespective of how they may be characterized. The comparison is of aggregate not of particular taxes or particular fees. Local taxes imposed by a municipality must also be taken into account in determining whether a retaliatory tax should be imposed. . . . *The application of a retaliatory statute requires that consideration be given to variations in allowable deductions under the statutes in question.*"
>
> (Emphasis added)
>
> [2 Couch on Insurance (2d ed), § 21.96, pp 588-589]

Accordingly, it is my opinion that when applying Section 476, *supra*, the insurance bureau must take into account credits and deductions which the state of a foreign insurer grants Michigan insurance corporations doing a like business in that state.

The answer to your third question regarding the proper application of Section 476, *supra*, can be found at OAG, 1952, No 1535, p 5 (July 14, 1952). There the Attorney General was asked to interpret the retaliatory provision of the Insurance Code of 1948. Since the provision analyzed there is substantially the same as Section 476, *supra*, the opinion is still applicable. The pertinent part of the opinion states as follows:

> *"If any* Michigan company is paying to a foreign state taxes, fees, charges, etc., totaling in the aggregate more than that company would pay on the same business in Michigan if it were a foreign company

> doing business here, then the retaliatory law would be applicable *to all* of the companies of that foreign state doing business in Michigan. We must first find as an ultimate fact that a Michigan company is paying more in the aggregate in the foreign state than it would be here if it were a foreign company doing business here. . . . I am impelled to conclude that if a Michigan company is charged in the aggregate in any one year by such foreign state more than it would have been charged in Michigan if it were a foreign company doing business here, then the retaliatory law should be invoked against every similar insurer domiciled in said foreign state and doing business in Michigan." p 8 (Emphasis added)

Your opinion request refers to a factual situation in which Michigan insurers doing business in New York State must pay a 2% net premiums tax to the State and a .4% net premiums tax to the City of New York for premiums received from residents thereof. In addition, the State of New York allows several credits and deductions not provided for in the Michigan reciprocal tax statute. In applying this opinion to New York insurers transacting business in Michigan, Section 476, *supra,* would operate as follows:

(1) Determine whether any Michigan insurer pays more in taxes, fees, etc., in the aggregate, in the State of New York (state taxes and local taxes-deductions and credits) than it would pay had it been a foreign insurer doing business in Michigan;

(2) If the answer to (1) is in the affirmative, then apply the New York rate to all New York insurers doing business in Michigan.

FRANK J. KELLEY,
Attorney General.