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TAXATION: Gross premiums on life insurance — foreign companies.
INSURANCE: Premium tax payable by foreign insurance companies on life insurance written in Michigan.

Gross premiums upon business written in this state include total premiums without reduction of dividends, irrespective of how such dividends are used or applied.

Current dividends or those left on deposit used as premiums to purchase additional paid-up insurance do not constitute gross premiums upon business written in this state in addition to gross premiums paid pursuant to the insurance contract.

Company, employee and agents contributions for employee-agents group insurance premiums constitute gross premiums for purposes of computing premium tax payable by foreign companies on life insurance policies written in this state.

Premiums waived under disability or other contract provisions are not includable in the term "gross premiums" for purposes of computing premium tax payable by foreign companies on life insurance written in Michigan.

No. 4431 April 19, 1965.

Mr. Allen L. Mayerson
Commissioner of Insurance
Lewis Cass Building
Lansing, Michigan

You have requested an opinion of the Attorney General as to whether or not the following items are allowable deductions, for premium tax purposes, from gross premiums on life insurance policies written by foreign insurance companies on residents of this state:

1. Dividends applied to reduce renewal premiums.
2. Dividends paid in cash.
3. Dividends left to accumulate.
4. Dividends applied to reduce the premium-paying period.
5. Current dividends used as premiums to purchase paid-up additional insurance.
6. Dividends left on deposit and subsequently used to purchase additional paid-up insurance.
7. Premiums waived under disability or other contract provision.
8. Company contributions for employee and agents group insurance premiums on policies issued by the employer.
9. Employee and agents contributions for employee-agents group insurance premiums on policies issued by the employer.

In specific answer to items 1 through 4, it is understood that you do not refer to these items as being deducted from the gross premiums paid pursuant to life insurance contracts. Rather, you are concerned with whether or

not dividends, under circumstances listed in your questions 1 through 4, are a part of gross premiums, in addition to the gross amount of premiums required to be paid pursuant to the life insurance contracts.

As indicated in your request, resolution to the questions is dependent upon an interpretation of Section 440 of the Michigan Insurance Code,[1] which reads in material part:

> "Every foreign insurance company, of the classes herein enumerated, admitted to do and doing any insurance business in this state, shall, as a condition precedent to the privilege of doing business, pay to the commissioner for prompt deposit with the treasurer of the state of Michigan, on the first day of January of each year, or before the first day of April next thereafter, (subject to the retaliatory provisions in section 476) a tax upon its said business written in this state under the authority of the commissioner hereof, for the year ending December 31 of the preceding year, computed as follows:
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> "First, life insurance companies, a tax of 2% on the gross premiums, excluding considerations for original annuities;"

The effect of this language is to impose a tax of 2% on the gross premiums, excluding consideration for original annuities, upon business written in this state under the authority of the Commissioner of Insurance. The meaning of the term "gross premiums" for premium tax purposes has been adjudicated in the states of Colorado and Iowa, and is the subject of legal controversy in several other states.

The Supreme Court of Iowa, in *Prudential Insurance Co. v. Green,* 231 Iowa 1371, 2 N.W. 2d 765 (1942), 141 A.L.R. 1401, construed the term "gross amount of premiums received * * * for business done" as to exclude dividends applied to purchase paid-up additions. In so holding, the Supreme Court of Iowa overruled the lower court which had held that the application of the dividend to buy additional paid-up insurance constituted a premium in addition to the gross premium paid for the policy which gave rise to the dividend. In reversing the lower court, the Supreme Court construed the term "gross premium" to mean the amount of premium required to be paid the insurance company under a contract of insurance. The Court therefore concluded that, inasmuch as the application of the return of a part of the contract premium to the policyowner as a dividend was not an additional premium contracted for and paid to the insurance company, the dividend was not a part of the gross premiums received by the insurance company for insurance business done in the state of Iowa.

In arriving at this conclusion, the Court affirmed its prior holding in *New York Life Insurance Co. v. Burbank,* 209 Iowa 199, 216 N.W. 742 (1928), wherein it held that the gross premium paid under the contract of insurance included the total premium paid, including the amount of any dividend, irrespective of how applied by the policyholder. The Supreme

[1] Sec. 440, Act 218, P.A. 1956, as amended by Act 37, P.A. 1959 [C.L.S. 1961 § 500.440; M.S.A. 1963 Cum. Supp. § 24.1440].

Court of Iowa's conclusion in the *Burbank* case is supported by other authority on the subject.[2]

The case of *Prudential Insurance Co. v. Green, supra,* was followed by the Supreme Court of Colorado in *Prudential Insurance Co. v. Kavanaugh,* 125 Colo. 93, 240 P 2d 508 (1952). The Court there made the following analysis of the contention of the Insurance Department of Colorado that a policyholder's election concerning dividend payments constitutes an additional gross premium:

> "But it is argued that, when the policyholder applies his share of the divisible surplus toward the payment of paid-up additional insurance, this credit, which he so applies, becomes in effect a new premium which also should be subject to the two per cent tax. In making this argument, counsel lose sight of the fact that the policyholder's share of the surplus already has been taxed by virtue of our holding in *Cochrane v. National Life Ins. Co., supra,* where we declared that the amount taxable was the gross premium provided under the terms of the policy and not the net premium after deducting the policyholder's share of the divisible surplus. It comes down to a case of bookkeeping. If the amount used to purchase additional paid-up insurance is treated as a new premium and subject to taxation, then credit for that same amount must be given, on the other side of the ledger, to the policyholder on the premium due as contracted for in the policy; for this is what the company has said is the overplus found not to be necessary in buying the protection provided on the face of the policy. Stated another way, the policyholder in the instant case has paid out not one dollar more than the annual premium provided in the policy. It is only this amount that has been contracted for. It is this amount only that the company has collected from the policyholder. It is the payment of this same amount that has entitled the policyholder to the additional coverage, but only by virtue of the terms of the policy and not through a new contract providing for additional premiums. * * *" (125 Colo. 96-97)

In quoting at length from *Prudential Insurance Co. v. Green, supra,* the Colorado Supreme Court noted that the tax is required to be paid on the full contract premium without the reduction of dividends on the initial policy, and then concluded at page 100:

> "'* * * *If the statute does not contemplate any reduction from*

[2] As stated by the Supreme Court of Iowa in *Prudential Ins. Co. v. Green, supra,* 231 Iowa 1371, 1379, quoting from *New York Life Ins. Co. v. Burbank, supra,* 209 Iowa at page 207:

> "'* * * Our conclusion is sustained by the following cases: Northwestern Mut. Life Ins. Co. v. Roberts, 177 Cal. 540 (171 Pac. 313); Cochrane v. National Life Ins. Co., 77 Colo. 243 (235 Pac. 569); New York Life Ins. Co. v. Wright, 31 Ga. App. 713 (122 S.E. 706); State ex rel. Northwestern M. L. Ins. Co. v. Tomlinson, 99 Ohio St. 233 (124 N.E. 220); State ex rel. Hdw. Mut. Cas. Co. v. Hyde, 304 Mo. 447 (264 S.W. 381); Massachusetts Bond. & Ins. Co. v. Chorn, 274 Mo. 15 (201 S.W. 1122); Fire Assn. v. Love, 101 Tex. 376 (108 S.W. 158).'"

the contract premium because of the payment of dividends, to be consistent we must also hold that it does not contemplate any addition thereto because of the application of dividends.' "

Although the issues resolved by the Supreme Courts of Iowa and Colorado have not yet been adjudicated in this state, the conclusions reached in these decisions appear to be reasonable and rational interpretations, and are in accord with Opinion No. 1020, August 5, 1949, O.A.G. 1949-50, p. 301. The Attorney General there construed the intent of the Michigan legislature in using the phrase "all premiums" for premium tax purposes to be synonymous with "gross premiums" and held that retrospective credits are not deductible from the gross premiums of life insurance companies and from "all premiums" of casualty companies.

In answer to your question pertaining to items 1 through 4 above, it is my opinion that the gross premiums upon business written in this state include the total premiums contracted for without the reduction of dividends, irrespective of how the dividends are applied or used under the options granted the policyholder by the life insurance contract. Dividends applied to reduce premiums or the premium-paying period, and those paid in cash or left to accumulate, are not allowable deductions from gross premiums written by foreign life insurance companies on residents of this state.

As to items 5 and 6, please be advised that it is my opinion that current dividends used as premiums to purchase additional paid-up insurance, or dividends left on deposit and subsequently used to purchase paid-up insurance, do not constitute gross premiums upon business written in this state in addition to the gross amount of the premium paid pursuant to the contract of insurance giving rise to the dividends.

We turn now to that part of your request pertaining to items 8 and 9, for which there is no precedent. We assume that these questions are not directed to how much of company, employee or agents contributions for employee-agents group insurance premiums can be attributable to business written in this state, but rather to a determination of whether or not they constitute gross premiums.

The California Appellate Court, in *California-Western States Life Ins. Co. v. State Board of Equalization, et al.*, 151 C A 2d 559, 312 P 2d 19 (1957), had before it the question of whether or not employee contributions to a retirement plan are premiums received by an insurance company under a contract of insurance. The Court held that the retirement plan did not constitute an insurance contract and was not a part of the insurance business of the company. As stated in *California-Western States Life Ins. Co. v. State Board of Equalization, et al., supra,* at page 561:

"* * * Had this plan been established and maintained by an employer who was not an insurer, we think no one would contend that it was an insurance contract or that its establishment and maintenance constituted the doing of insurance business. The fact that respondent is an insurer is not competent to alter either the purpose or the nature of its employees' retirement plan."

The Supreme Judicial Court of Massachusetts, in *State Tax Commission v. John Hancock Mutual Life Ins. Co.*, 341 Mass. 555, 170 N.E. 2d 711 (1960), considered the same question as was before the California Court in the case of *California-Western States Life Ins., Co., supra,* except that company, rather than employee, contributions were involved. The Court concluded at page 565:

> "* * * We think serious doubt exists whether the Legislature had any intention to classify the retirement fund for taxation with policies issued in normal course. Because real doubt as to the legislative intention exists, under the familiar principles mentioned by the Appellate Tax Board such doubts are to be resolved in favor of the taxpayer. * * *"

Both the California and the Massachusetts Courts concluded that contributions to a retirement plan did not constitute premiums on insurance contracts. Neither Court considered items 8 and 9 of your question. However, the reasoning employed in *California-Western States Life Ins. Co., supra,* and in *State Tax Commission v. John Hancock, supra,* for the exclusion of retirement contributions dictates the inclusion in "gross premiums" of contributions to purchase group life insurance. The fact that an insurance company maintains a retirement plan for its employees and agents and that this plan contains provisions analogous to an insurance contract does not make the retirement plan an insurance contract. Conversely, where a group life insurance policy is brought into being by a life insurance company and is paid for out of the contributions of the company and its employees and agents, it is nonetheless a group insurance policy. The moneys used to purchase it are considered to be as much gross premiums as though the policy were purchased by other than an insurance company.

The rationale and logic of the Colorado Supreme Court in *Prudential Insurance Co. v. Kavanaugh, supra,* 125 Colo. 93, 240 P 2d 508 (1952), and that of the Iowa Supreme Court in *Prudential Insurance Co. v. Green, supra,* 231 Iowa 1371, 2 N.W. 2d 765 (1942), and the decisions cited and followed in those cases, require that the moneys contributed by the employees, the agents and the insurance company and used to buy a group insurance contract constitute gross premiums derived from the writing of insurance business. These contributions do not represent "gross premiums" which have previously been taxed.

In answer to items 8 and 9 of your question, it is the opinion of the Attorney General that company, employee and agents contributions for employee and agents group insurance contracts issued by the employer are part of gross premiums for the purpose of computing the premium tax payable by foreign companies on premiums on life insurance policies written in this state.

We turn, lastly, to item 7 of your question. The question of the inclusion of the gross premiums applied to a life insurance contract by an insurance company as a result of the waiver of premium provision in case of permanent disability was adjudicated in *State of Kansas, ex rel. v. Hobbs,* 158 Kan. 320, 147 P 2d 721. The Supreme Court of Kansas held that the amount of any premium, the payment of which was waived under a

policy as provided for in the laws of Kansas, did not constitute a premium received by a foreign insurance company on account of its business done in the State of Kansas. The Court reasoned that this amount of premium was not received by the insurance company, even though the policyholder received a benefit measured by the amount of the gross premium that would have had to be paid if the waiver of premium contract provision did not become operative. The Kansas law, as quoted by the Supreme Court at 158 Kan. 320, at page 322, reads:

> " 'The annual state tax of two percent upon all premiums *received* by foreign insurance companies on account of their yearly business in this state, imposed by sections 5177, 5467 and 5468 of the General Statutes of 1915, should be computed upon the total amount of premiums collected, retained and devoted to the business of the insurance companies, but any surplus of premiums not so used, but returned to the policyholders or credited to them as abatements or dividends should be excluded from the computation.' " (Emphasis added)

There is similar language in the Michigan statute. While Sec. 440, Michigan Insurance Code of 1956, as amended, *supra,* provides that payment of the premium tax shall be on "business written," Sec. 441[3] provides:

> "The taxes on premiums from insurance companies shall be upon all premiums, whether upon business written or renewed, which, during the year or part of the year ending on the preceding thirty-first day of December, *shall have been received* by any insurance company, * * *." (Emphasis added)

These two sections must be read together.

The waiver of premium benefit is purchased by the gross premium which has been reported annually in full for premium tax purposes. When the waiver of premium benefit becomes effective on account of the insured's disability, the insurance company receives no additional money. The policyholder's fully taxed premium payments, prior to the disability, are the only source of the moneys required to provide these benefits.

This is the position I understand that the Insurance Department has always taken as evidenced by the annual statement form which provides a space for "premium or annuity considerations waived under disability or other contract provisions" and directs the insured to show premium or annuity considerations waived under disability or other contract provisions in one sum and not to include them in the distribution by states columns.

Specifically, in answer to Item 7 of your question, it is the opinion of the Attorney General that premiums waived under disability or other contract provisions are not includable in the term "gross premiums" for the purpose of computing the premium tax payable by foreign life insurers on life insurance written in Michigan.

FRANK J. KELLEY,
Attorney General.

[3] Sec. 441, Act 218, P.A. 1956 [C.L.S. 1961 § 500.441; M.S.A. § 24.1441].