



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Walter C. Woodward, Commissioner
Board of Insurance Commissioners
Austin, Texas

Dear Sir:

Opinion No. 0-2373

Re: Does "gross premium receipts" as used in Article 7054, Vernon's Annotated Civil Statutes, contemplate that premiums have been received when notes such as those described have been accepted in settlement of the premium account; and another question.

Your recent request for an opinion of this Department upon the questions as are herein stated has been received.

We quote from your letter as follows:

"In a recent examination of the Highway Insurance Underwriters, a Reciprocal Insurance Exchange operating under the provisions of Chapter 20, Title 78, Revised Civil Statutes of Texas, it was found that the bulk of the Exchange's business is written on a partial deferred premium payment plan, which contemplates that 25 percent of the premium will be paid in cash and the balance in nine equal monthly installments, the first to mature one month from the effective date of the policy. It was also found that unpaid note installments remain in the assets of the Exchange after the expiration of the policy and that note balances are frequently in excess of unearned premiums when policies are canceled.

"It is the practice of the Exchange in disposing of uncollectible note balances on expired policies and notes in excess of unearned premiums on canceled policies to treat them as returned premiums by running endorsements to the policies, which state in substance that the premium should have been the amount actually collected. This practice has the effect of reducing 'gross premium receipts' from which Occupation Tax computations are made and reduces 'earned premiums' which are used in calculating claim liability for Workmen's Compensation and Public Liability losses by the Schedule 'P' formula.

"It is the contention of the Exchange that a premium is neither received nor earned if collection of a premium note is not made, even though coverage is furnished. The Examiners take the position that a premium is received when the Exchange accepts either cash or notes or both in settlement of the premium and furnishes the coverage provided in the policy; and that failure to make collection of a note after furnishing such coverage does not serve to reduce 'gross premium receipts'. The Examiners further contend that a premium is earned when the Exchange has furnished the coverage provided in the policy, and failure to make collection of a note accepted in payment thereof does not reduce its premium earnings.

"Two questions arise out of the recited practices. Please advise this Department: First, if 'Gross Premium Receipts', as used in Article 7064, Title 78, Revised Civil Statutes of Texas, contemplates that premiums have been received when notes such as those described herein have been accepted in settlement of the premium account. (These notes are carried as admitted assets.)

"Second, if, in your opinion, premiums have been earned when coverage provided in the policy has been furnished to assureds who fail to make premium note payments."

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In your first question you refer to Article 7064, Title 78, Revised Civil Statutes of Texas. We assume that you have reference to Article 7064, Title 122, Vernon's Annotated Civil Statutes, which reads as follows:

"Every insurance corporation, Lloyd's, or reciprocals, and any other organization or concern transacting the business of fire, marine, marine inland, accident, credit, title, livestock, fidelity, guaranty, surety, casualty, or any other kind or character of insurance business other than the business of life insurance, and other than fraternal benefit associations, within this State at the time of filing its annual statement, shall report to the Board of Insurance Commissioners the gross amount of premiums received upon property located in this State or on risks located in this State during the preceding year, and each of such insurance carriers shall pay an annual tax upon such gross premium receipts as follows: shall pay a tax of three and twenty-five one hundredths (3.25) per cent, provided, that any such insurance carriers doing two (2) or more kinds of insurance business herein referred to shall pay the tax herein levied upon its gross premium receipts where referred to in this law shall be the total gross amount of premiums received on each and every kind of insurance or risk written, except premiums received from other licensed companies for reinsurance, less return premiums and dividends paid policyholders, but there shall be no deduction for premiums paid for reinsurance. The gross premium receipts, as above defined, shall be reported and shown as the premium receipts in the report to the Board of Insurance Commissioners by the insurance carriers, upon the sworn statements of two (2) principal officers of such carriers. Upon receipt by the Board of Insurance Commissioners of the sworn statements, showing the gross premium receipts by such insurance carriers, the Board of Insurance Commissioners shall certify to the State Treasurer the amount of taxes due by each insurance carrier, which tax shall be paid to the State Treasurer on or before the 1st of March following, and the Treasurer shall issue his receipt to such carrier which shall be evidence of the payment of such taxes. No such insurance carrier shall receive a permit to do business in this State until all such taxes are paid. If any such insurance carrier shall have as much as one-fourth of its entire assets, as shown by said sworn statement, invested in any or all of the following securities: real estate in this State, bonds of this State or of any county, incorporated city or town of this State, or other property in this State in which by law such

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insurance carriers may invest their funds, then the annual tax of any such insurance carriers shall be one and one-fourth (1 $\frac{1}{4}$) per cent of its said gross premium receipts; and if any such insurance carrier shall invest as aforesaid as much as one-half of its assets, then the annual tax of such insurance carrier shall be five eighths of one per cent of its gross premium receipts, as above defined. No occupation tax shall be levied on insurance carriers herein subjected to a gross premium receipt tax by any county, city, or town. All mutual fraternal benevolent associations, now or hereafter doing business in this State under the lodge system and representative form of government, whether organized under the laws of this State or a foreign State or country, are exempt from the provisions of this Article. The taxes aforesaid shall constitute all taxes collectible under the laws of this State against any such insurance carriers, except the maintenance tax provided for under Article 4902 and the tax on premiums received under Workmen's Compensation Insurance policies, as provided for in House Bill No. 471, Chapter 25, General and Special Laws, Forty-fifth Legislature, Regular Session; taxes provided in House Bill No. 258, Chapter 125, General and Special Laws, Forty-fifth Legislature, Regular Session; and Senate Bill 77, Chapter 335, General and Special Laws, Forty-fifth Legislature, Regular Session; and no other tax shall be levied or collected from any insurance carrier by any county, city, or town, but this law shall not be construed to prohibit the levy and collection of State, county, and municipal taxes upon the real and personal property of such carrier. Purely co-operative or mutual fire insurance companies carried on by the members thereof solely for the protection of their own property, and not for profit, shall be exempt from provisions of this law; however, foreign assessment casualty companies admitted to do business in Texas under Chapter 5, Title 78, Revised Civil Statutes of Texas of 1925, shall also pay a tax of three and twenty-five one hundredths (3.25) per cent of their gross premium receipts from Texas business, as such receipts are herein defined. Provided, however, if any such company shall have an amount equal to one-half of the gross amount of assessments, dues, premiums,

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or other amounts collected from policyholders within this State during the preceding year, as shown by the sworn statement herein required to be filed, invested in any or all of the above-mentioned securities, then the annual tax of such company shall be two (2) per cent of its said receipts for such preceding period, and if such company shall have invested as aforesaid an amount equal to the gross amount of such receipts for the preceding year, as shown by said sworn statement, then the annual tax of such company shall be one-half of one per cent of its said receipts."

Article 5032, Vernon's Annotated Civil Statutes, reads in part as follows:

"Any certificate of authority shall continue in effect until the new certificate of authority be issued or specifically refused. The schedule of fees set out in Article 3920, so far as pertinent, shall apply to reciprocal exchanges and their attorneys in fact. Said exchanges shall pay a tax of three and one-fourth ($3\frac{1}{4}$) per cent on all premiums collected, except fire and workmen's compensation premiums, under the provisions of Article 7064, Revised Civil Statutes of Texas, 1925, as amended by House Bill No. 8, Chapter 495, Page 2040, Article 4, Acts of the Third Called Session, Forty-fourth Legislature, 1926, as amended Acts 1937, Forty-fifth Legislature. House Bill No. 441, Section 1, as amended Acts 1939, Forty-sixth Legislature, House Bill No. 556, subject to reduction by investment in Texas securities as therein provided; and exchanges writing workmen's compensation insurance shall pay a tax of one-half ($\frac{1}{2}$) of one (1) per cent of the workmen's compensation premiums collected under the provisions of Article 7064a, Revised Civil Statutes of Texas, 1925, as enacted by House Bill No. 8, Chapter 495, Page 2040, Article 4, Acts of the Third Called Session, Forty-fourth Legislature, 1926, as amended Acts 1937, Forty-fifth Legislature, by House Bill No. 441, Section 1-b, as amended Acts 1939, Forty-sixth Legislature, House Bill No. 557; and a further tax of three-fifths ($\frac{3}{5}$) of one (1) per cent or such lesser amount as the Board of Insurance Commissioners may assess, on workmen's compensation premiums collected in this State under the provisions of Chapter 25, Section 1, Acts of 1937, Forty-fifth Legislature.

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"Provided further, that an additional tax of one-fifth (1/5) of one (1) per cent or such lesser amount as the Board of Insurance Commissioners may assess shall be paid by such exchanges on gross premiums collected for motor vehicle insurance under the provisions of Chapter 253, Acts of the Fortieth Legislature, as amended Acts of 1937, Forty-fifth Legislature by Senate Bill No. 77. Acts 1915, p. 269; Acts 1939, 46th Leg., p. 417, § 7."

The word "gross" is defined in the case of Fire Association of Philadelphia v. Love, 108 S. W. 158, by the Supreme Court. We quote from this case as follows:

"The word 'gross' is defined: 'Whole; entire; total; without deduction.' Webster's Dictionary; Scott v. Hartley, 126 Ind. 246, 25 N. E. 826. The language under consideration in the statute is: 'The gross amount of premiums received in the state.' There is no ambiguity in the language of the statute, and there can be no doubt as to what its ordinary meaning is. The rule governing the interpretation of such language is thus stated in Chambers v. Hill, 26 Tex. 472; 'Where language is plain and unambiguous, there is no room for construction. It is never admissible to resort to subtle and forced constructions to limit or extend the meaning of language. And, where words or expressions have acquired a definite meaning in law, they must be so expounded.' Under the rule of interpretation just quoted there is no room for construction of the language of the statute. It just simply means that the entire sum received by such insurance companies as premiums in this State should be the basis upon which to estimate the occupation tax required to be paid by such companies. If, however, there were any want of certainty in the language used, the Legislature defined the term in these words: 'Gross premium receipts are understood to be a premium receipt reported to the Commissioner of Insurance and Banking by the insurance companies upon the sworn statement of two principal officers of such companies.' The premium receipts required to be reported by the officers of the insurance companies are the gross premiums received by the company in this state. Therefore, taking the language of the entire provision into consideration, it means, as stated be-

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fore, that the basis upon which the tax is to assessed is 'the gross premium receipts,' the whole amount received, without deduction or abatement."

The terms "premium", "assessment", "deposit", and "note", as used in the law of insurance in connection with the word "note", refer to the instruments given in place of payment, or in payment, in whole or in part, of insurance premiums or assessments. They may constitute actual payment, or mere evidence of a debt, and refer to premiums or assessments passed or currently due, or to fall due in the future. (Couch on Insurance, Section 651)

As above stated, a premium note may constitute payment or it may merely evidence a debt representing the premium. In determining into which class a particular note falls, the test is the intention of the parties. (Duncan v. United Mutual Fire Insurance Co., 254 S. W. 1110)

Where premiums are payable in advance and the policy and the application constitute the contract, the acceptance of the premium note instead of cash effects a payment of the premium. (Amicable Life Ins. Co. v. White, 38 S. W. (2d) 860)

In view of the foregoing authorities, you are respectfully advised that it is the opinion of this Department that the term "gross premium receipts" as used in Articles 5032 and 7064, supra, means and includes all premiums received whether in cash or by note, which effects a payment of the premium. Here we are concerned with the proposition of whether or not the notes described above constitute or effect a payment of the premium. We believe that under the facts stated, the notes in question effect a payment of the premiums.

In answer to your second question, you are further advised that it is our opinion that the premiums have been earned when coverage provided in the policy has been furnished to the assured, notwithstanding the fact the assured fails to make the premium note payments.

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Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

Ardell Williams

By

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AW:BBB

APPROVED NOV 20, 1940

Gerald B. Mann

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