



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable O. P. Lockhart, Chairman
Board of Insurance Commissioners
Austin, Texas

Dear Sir:

Opinion No. 0-5337

Re: Mortuary funds of mutual assessment associations, whether in view of Chapter 386, Acts of the 43rd Legislature, 1943, (Article 8088-3, Vernon's A. C. S) such funds or additions thereto are taxable as income under the Federal Revenue Act of 1936, and related questions.

We have considered all of the questions propounded in your letter relating to the above subject and we are of the opinion that mortuary or relief funds of mutual assessment associations, now accumulated, or contributions that may be made thereto, should not be treated as taxable income.

This very question, involving the Texas statutes regulating the affairs of such associations, is answered by *General Life Insurance Company v. Commissioner of Internal Revenue*, U. S. Circuit Court of Appeals for the Fifth Circuit, Opinion No. 10628, decided July 8, 1943.

Referring to the tax liability of a Texas company mortuary fund, under the Federal Revenue Act of 1936, the court said in part:

"* * *. The fact that it is called a 'mortuary fund' instead of a Reserve Fund is of no consequence. * * *"

"* * *. If it is irrevocably dedicated for the use and protection of the policy holders, it is not income of the company. * * *"

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"* * *. Since the reserve is held for the policy holders and not for the Company, Congress has not taxed this reserve as income to the Company. * * *."

The Texas Legislature knew of the efforts being made by Federal revenue agents to tax these funds. In May, 1943, it enacted the following:

"Section 1. Any company * * * may pay from the mortuary or relief funds * * * any taxes that may be * * * required * * * because of income to such funds."

"Section 3. The fact that these companies * * * are threatened with taxes on their mortuary funds * * * creates an emergency. * * *". Chapter 386, Acts of the 49th Legislature. Article 5068-3, Vernon's A.C.S.

This Act, of course, merely permits the use of mortuary funds in payment of income taxes that are "required to be paid." It is not intended to relax the inviolability of such funds for any other purpose. See our Opinion No. 0-2988

Very truly yours

APPROVED AUG 4, 1943

ATTORNEY GENERAL OF TEXAS

FIRST ASSISTANT
ATTORNEY GENERAL

By

Elbert Hooper
Elbert Hooper
Assistant



EH-MR

Enclosure