The Acts of 1955, Ch. 55, supra, provides for an annual premium tax on assessments derived from business written within this state and the amount of three (3) per cent of the gross premium over the deduction allowed therein.

It is, therefore, my opinion that if the Mutual Benefit Health and Accident Insurance Company pays the premium tax for the entire year of 1955, regardless of the effective date of the Acts of 1955, supra, they will not be subject to Gross Income tax for any portion thereof, by virtue of the holding in 1943 O. A. G., page 368, supra.

OFFICIAL OPINION NO. 14

June 1, 1955

Mr. Harvey B. Stout
State Service Officer
World War Memorial
431 N. Meridian Street
Indianapolis, Indiana

Dear Mr. Stout:

Your letter of May 19, 1955 has been received requesting an Official Opinion on the following facts:

"A licensed teacher is employed by the Vocational Educational Division of the State Department of Public Instruction and participates in the Teacher Retirement Fund. His duties consist in supervising schools in the State authorized to offer Institutional-on-Farm Training for veterans.

"By action of the Governor of the State, the responsibilities for the operation of the Institutional-on-Farm Training program is transferred, together with administrative personnel, to the Education Division of the Veterans' State Service Department, with the supervisory duties remaining the same.

"Question: May a teacher thus employed under those conditions continue to participate in the Teacher Retirement Fund?"
Said teacher in the past and while an employee of the State Department of Public Instruction was specifically authorized by statute to be a member of the State Teachers’ Retirement Fund, as the Acts of 1915, Ch. 182, Section 14 (a), as amended, as found in Burns’ Indiana Statutes (1948 Repl., 1953 Supp.), Section 28-4511, in defining who shall be members and beneficiaries of said Fund, provides in part as follows:

“The members and beneficiaries of this fund shall include * * * employees and officers of the state department of public instruction and the state teachers’ retirement fund who were qualified under this act previous to their election or appointment. * * *

No provision is made under the general provision of said statute for this teacher to continue to participate in the Teachers’ Retirement Fund while performing such services in the Education Division of the Veterans State Service Department. However, clause (m) of the above-referred to statute, in connection with its providing for a leave of absence for a teacher, in part further provides:

“* * * In such instances and for exchange teaching, military, naval, or allied service, and other educational employment as defined and approved in each case by the board such teacher shall be regarded as a teacher and entitled to the benefits of this act, provided that for or during such an absence he shall pay or continue to pay into such fund the amount of assessment payable by such teacher as provided by this act * * .”

Under the last-quoted provision of the statute the State Teachers’ Retirement Board could determine that such teacher in such employment is entitled to continue as an active member of said Fund. However, under said statutory provision it must be so determined by said Board in hearing on his particular case and pursuant to his request for such relief.