

**INSURANCE DEPARTMENT: Taxation—premium tax on foreign assessment insurance companies. Foreign insurance companies, premium tax.**

November 2, 1937.

Mr. George H. Newbauer,  
Commissioner of Insurance,  
Statehouse,  
Indianapolis, Indiana.

Dear Sir:

Your letter of November 1, 1937, asks this question: Is a mutual health and accident insurance corporation operating on the assessment plan organized under the laws of Nebraska and doing business in Indiana as a foreign insurance company liable to the State of Indiana for a 3 per cent premium tax?

Your letter points out that this insurance company was granted its license to do business in the State of Indiana pursuant to the provisions of chapter 195 of the Acts of the General Assembly of Indiana of 1897.

Section 25 of this Act of 1897 reads as follows:

“The fees to be paid by each such corporation, association or society, to the auditor for the authority to such corporation, association or society, and its agents under the license granted by him to each corporation, association or society, to transact business in the State of Indiana shall be as follows: For filing copy of charter or articles of incorporation, twenty-five dollars; for filing each annual statement, twenty dollars; for issuing certificate of authority, or license to company, corporation, association or society, one dollar; for issuing license to each agent, one dollar; for affixing seal and certifying to any paper, one dollar; for renewal of license, each such corporation, association or society shall file with the auditor of state its annual statement, for which it shall pay the sum of twenty dollars; for issuing license to each agent, one dollar; for affixing seal and certifying any paper, one dollar: *Provided, also,* That when any other state or country shall impose any obligations in excess of those imposed by this Act upon any such corporation, association or society of this

state, a like obligation shall be imposed on similar corporations, and their agents, of such state or country doing business in this state: *And provided, also,* That such corporation, association or society, in transacting business in this state shall be subject only to the provisions of this Act."

I wish to call your attention particularly to the last sentence of the above quoted section, which says, in substance, that such corporation shall be subject *only* to the provisions of this Act.

At the time that the 1897 law was enacted there was in effect in Indiana section 67 of chapter 99 of the Acts of 1891, which provided as follows:

"Every insurance company not organized under the laws of this state and doing business therein shall in the months of January and July of each year report to the auditor of state, under oath, of the president and secretary the gross amount of all receipts received in the State of Indiana on account of insurance premiums for the six months last preceding, ending on the last day of December and June of each year next preceding, and shall at the time of making such report pay into the treasury of the state the sum of three dollars on every one hundred dollars of such receipts, less losses actually paid within the state, and any such insurance company failing or refusing for more than thirty days to render an accurate (account) of its premium receipts as above provided and pay the required tax thereon shall forfeit one hundred dollars for each additional day such report and payment shall be delayed, to be recovered in an action in the name of the State of Indiana on the relation of the auditor of state in any court of competent jurisdiction, and it shall be the duty of the auditor of state to revoke all authority of any such defaulting company to do business within this state."

In 1919 the legislature re-enacted section 67 of the Acts of 1891. Such re-enactment is section 82 of the Acts of 1919. Said section 82 is identical in every particular with section 67 of the Acts of 1891.

In 1922 the Appellate Court in the case of the State of Indiana v. Fidelity Health and Accident Company, 79 Ind. App. 377, held, "that the right of foreign associations to transact a sick and accident insurance business in this state is governed *exclusively* by the Act of 1897, and that the privilege tax provided for by the Act of 1891 was by the state unlawfully imposed upon appellee." (Our italics.)

In 1927, by chapter 209 of the Acts of 1927, the legislature amended section 82 of chapter 58 of the Acts of 1919 by changing the time of making the report from March and September to January and July and by inserting the words "for more than 30 days." The material portions of the Act of 1919, which contained the material portions of the Act of 1891, were not changed by the amendment of 1927.

In view of the decision of the Appellate Court in the case of State of Indiana v. Fidelity Health and Accident Company, *supra*, the question narrows itself down to this: What effect the Act of 1919 and/or the Act of 1927, heretofore referred to, have upon the provision in section 25 of chapter 195 of the Acts of 1897, particularly the last sentence which provides: "That such corporation, association or society, in transacting business in this state, shall be subject only to the provisions of this act?"

In the case of the Public Service Commission v. City of Indianapolis, 193 Ind. 37, 49, the Supreme Court said: "And where a later statute merely re-enacts the provisions of an earlier one, it does not repeal an intermediate Act which has qualified or limited the earlier one, but such intermediate Act will be deemed to remain in force, and to qualify or modify the new Act in the same manner as it did the first."

In view of the Public Service Commission case, *supra*, it is my opinion that the Act of 1897 qualifies or modifies the Act of 1919, *supra*, and the Act of 1927, *supra*.

Nor can the State of Indiana collect a tax from such foreign insurance company as is being considered by virtue of the so-called retaliatory taxing provisions of our Insurance Code. This is true for the reason that the statutes of Nebraska, same being section 77-902, Compiled Statutes of Nebraska for 1929, specifically exempt "such mutual companies as operate on the assessment plan." This was amended by the Acts of 1935 so as to bring within its scope such mutual companies operating on the assessment plan as were engaged

in the writing of workmen's compensation insurance. At the present time there are no Indiana companies writing insurance of this nature in Nebraska, nor does this company which we now have under consideration write workmen's compensation in this state.

Section 44-1512 of Nebraska Compiled Statutes of 1929 also provides for a premium tax, but such tax is limited to reciprocal insurance companies and inter-insurers. Thus, such statute is not applicable as a basis for the levying of a retaliatory tax by Indiana.

The pertinent provisions of the Retaliatory Statute, the same being section 39-5012, Burns, 1933, are:

"When, by the laws of any other state, any taxes \* \* \* are imposed upon insurance companies of this or other states, or their agents, greater than are required by the laws of this state, then the same obligations \* \* \* shall \* \* \* be imposed upon all insurance companies of such states and their agents."

As was said in the case of *State, ex rel., v. Continental Insurance Company*, 67 Ind. App. 536, 560, 561:

"It is only upon the happening of a certain contingency that he (auditor) is permitted or required to deviate from the primary law. For the purposes of this case, the contingency depends on whether by the laws of New York any taxes have been imposed upon insurance companies of Indiana or of states other than New York greater than are required by the laws of Indiana. \* \* \*

"The enactment of the retaliatory statute was not prompted by a tender solicitude for the public treasury, but rather by the desire to secure for the fire insurance companies of Indiana even-handed treatment by the legislatures of other states."

It is clear that by the provisions of this statute the prerequisite to the levying of a retaliatory tax by the State of Indiana is that Indiana companies doing business in the foreign state are taxed. This not being true in the instant case under consideration, the State of Indiana cannot impose under the retaliatory provisions of its Insurance Code a tax upon this Nebraska company.

Thus, then, a foreign mutual health and accident insurance company operating on the assessment plan and admitted to do business in Indiana pursuant to the provisions of chapter 195 of the Acts of 1897 is not subject to the payment of a premium tax but is obligated to pay only those fees chargeable under section 25 of chapter 195 of the said Acts of 1897.

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**ACCOUNTS, STATE BOARD OF: Teachers' pension fund,  
amount of withdrawals by those paying arrearages.**

November 4, 1937.

Hon. W. P. Cosgrove,  
State Examiner,  
State Board of Accounts,  
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of November 3, 1937, in which you submit the following question:

"The actuarial report on the Teachers' Retirement Fund Board at the time the board was organized under the 1921 amendment to the original teachers' retirement fund law sets out certain tables which were adopted for the operation of the board. One of the tables adopted sets out the amount of arrearage to be paid by teachers claiming service prior to 1921.

"This table sets up in one figure the amount due from a teacher who was eighteen years of age at the time she began teaching and who had twenty years of prior service when she became a member of the fund. The question which has arisen is, would the lump sum set out in the table constitute the teacher's contribution, or would twenty times the annual payment according to age at beginning as set out in the Act be construed as the teacher's contribution? We are referring to section 9 of the Teachers' Retirement Fund Act of 1921."

In reply to this question your attention is directed to section 28-4506, Burns Indiana Statute, 1933 Revision, subsection (c) of which statute sets out the rates of assessment and