

mands of any taxes or licenses or fees of every character imposed by the laws of the Territory, excepting property taxes, and the fees set forth in Section 3360, for conducting said business of insurance in said Territory.”

A tax upon the net income received by C. Brewer & Company is not a tax upon the insurance companies that Brewer & Company may represent, though part of Brewer & Company’s income may be derived from compensation paid them by insurance companies for services rendered. It is immaterial whether or not the amount of such compensation be based upon a percentage of the premiums collected or be determined in other ways. In my opinion, a tax upon the income of Brewer & Company, including compensation received from insurance corporations, is no more a tax upon these insurance corporations than an income tax upon the salary of an employee would be a tax upon his employer.

It is well settled that the burden of establishing an exemption is upon him who claims it. That taxation is the rule and exemption is the exception. The case of *Bridgeport v. Bishop*, 33 Conn. 187, illustrates this rule. This case holds that an act which provides that railroad companies shall pay a tax predicated on the market value of their stock and of their funded and floating debt, “which tax shall be in lieu of all other taxes on railroad property and franchise within the state,” does not exempt railroad bonds from taxation as the property of the person holding them. The exemption applies to the railroad alone and does not affect liability of persons to taxation on bonds held by them against railroads. So here the provision that tax shall be in settlement of all taxes upon the insurance companies, has no application to taxes upon the incomes of their agents, servants or employees.

Respectfully,

INGRAM M. STAINBACK,  
Attorney General

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April 21, 1915.

OPINION NO. 414.

TAXATION: Insurance Corporations:  
Agents of insurance companies  
must pay income tax on commissions  
received by them from insurance  
companies.

Charles T. Wilder, Esq.,  
Tax Assessor, First Division.  
Honolulu, T.H.

Dear Sir: In reply to your letter of today’s date requesting my opinion as to whether Section 3361, R. L. 1915, exempts C. Brewer & Company, Limited, from a payment of income tax on all commissions received by them from insurance companies for acting as agents for such companies, I beg to advise you that in my opinion this section grants no such exemption.

Section 3361 relates to tax upon insurance companies doing business in the Territory and provides for a tax of two per cent. on the gross premiums received from all business done within the Territory and further provides that the tax when paid “shall be in settlement of all de-