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Op. No. 62-10

STATE OF HAWAII

Department of the Attorney General

HONOLULU

February 27, 1962

Honorable Chas. H. Silva
Insurance Commissioner
State of Hawaii
P. 0. Box 3614
Honolulu 11, Hawaii

Dear Sir:

This concerns the matter of determining the amount of the tax base of factory mutual insurance companies under the provisions of Section 181-313, Revised Laws of Hawaii 1955 as amended.

A factory mutual fire insurance company's method of charging for insurance consists of requiring, at the time of the issuance of the policy, the deposit of a sum of money referred to by the company as a "premium deposit," the amount of which varies with the size and character of the risk but not with the term of the policy. For example, assuming a rate of 50 cents per $100 of insurance for a certain class of risk, that rate is used as the basis, for computing the amount of the premium deposit irrespective of the term of the policy. From the premium deposit there is "absorbed" each month by the company a sum computed by taking its total expenses, adding thereto its total incurred losses, and then subtracting therefrom its investment income. There is also included in the amount absorbed an appropriate contribution to reserve. The balance of the premium deposit remaining at the time of the termination of the policy is returned to the policyholder or it may be used by the insured as part payment of the premium deposit on a renewal policy.

Section 181-313 provides in part:

> "§ 181-313. Taxation. (a) Each authorized insurer, except life insurers and ocean marine insurers, shall pay to the treasurer, through the commissioner, in the case of domestic insurers a tax of two and one-quarter per cent, and in the case of other insurers a tax of three and one-quarter per cent, on the

> gross premiums received from all risks or property resident, situated, or located within this State, during the year ending on the preceding December 31 less return premiums (but not including dividends paid or credited to policyholders), and less any reinsurance accepted (the tax upon such business being payable by the direct writing insurer)."
>
> "(d) No return premium shall be deductible unless the original gross premium, or an adjustment thereof, in an amount equal to or in excess of the return premium, shall have been concurrently or previously reported as taxable under this section or a prior similar law of the State."

The statutory formula is "gross premiums" less "return premiums" and reinsurance. No question of reinsurance is presented.

This office is of the opinion that the "premium deposit" constitutes "gross premium" but that the "unabsorbed" portion thereof is not a "return premium" within the meaning of the statute.

In the field of insurance the word "premium" means the amount paid to the insurer for insurance. Allstate Ins. Co. v. State Board of Equalization, 336 P.2d 961; 44 C.J.S. Insurance, § 340. It is the consideration for the assumption of risk by the insurer. Hence it has been held to include charges denominated "dues" instead of "premium." Clay v. Hartford Life Ins. Co., 179 S.W. 1024. "Gross" means whole, entire or total. Thus "gross premium" has been held to mean the amount of the premium stated in the face of the policy (State v. Tomlinson, 124 N.E. 200; New York Life Ins. Co. v. Burbank, 216 N.W. 742; see also 84 C.J.S. Taxation, § 167) and to include even return premiums where the applicable statute did not expressly allow them as deductible items. United Pacific Ins. Co. v. Bakes, 67 P.2d 1024. However, Section 181-313 does permit the deduction of return premiums. This expression is generally understood to mean the return of the whole or a part of the premium paid for a policy of insurance upon cancellation thereof prior to the time fixed for its expiration. Northwestern Mut. Life Ins. Co. v. Roberts, 171 Pac. 313. It is usually applied to situations where the risk has not attached, as where the policy is void or is voidable and voided. Northwestern Mut. Life Ins. Co. v. Robert, supra; 3 Joye on Insurance, Chapter

XLV (2d ed.). As the risk which the factory mutual insurer contracts for attaches to the entire amount of the premium deposit, it would seem to follow that the “unabsorbed” portion of the premium and deposit would not be a return premium.

It might be noted, additionally, that Section 181-313 specifically states that dividends are not deductible from gross premiums. The unabsorbed premium of the factory mutual company appears to be similar to the dividends which were held not to be "return premiums" in Northwestern Mut. Life Ins. Co. v. Roberts, supra.

For the reasons stated above, this office is of the opinion that factory mutual insurance companies should be taxed the amount of the “premium deposits” without allowing deductions for the “unabsorbed” portions thereof.

Very truly yours,

/s/ Nobuki Kamida

NOBUKI KAMIDA
Deputy Attorney General

APPROVED:

/s/ Shiro Kashiwa

SHIRO KASHIWA
Attorney General