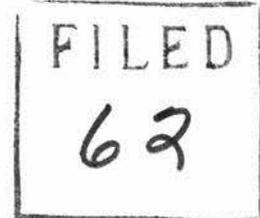


TAXATION:
REVENUE:

Title Insurance Companies, organized under the provisions of Article 17, Chapter 37, R. S. Missouri, 1939, exempted from payment of franchise tax to extent assets of corporation reasonably allocated to such insurance business.

January 17, 1950



Honorable Charles A. Miller
Commissioner, State Tax Commission
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office reading as follows:

"Will you kindly advise this Commission if it is necessary, under the new laws covering Title Insurance Companies, for this type of a corporation to make a return and pay a corporation franchise tax. We refer to the companies organized under Article 17, Chapter 37, R. S. Mo. 1939.

"While it is not customary to ask for more than one reply to a request, we are going to take the liberty of asking at this time if all insurance companies who now pay an annual premium tax of 2%, are relieved from making a return and paying a franchise tax."

Title Insurance Companies of the type referred to in your letter of inquiry are those which have among their chartered purpose the writing of title insurance as provided for in Article 17, Chapter 37, R. S. Missouri, 1939.

Your attention is directed to Section 6098a, Missouri R.S.A., which provides in part as follows:

"Every insurance company or association organized under the laws of the State of Missouri and doing business under the provisions of Articles 2, 7 and 17, of Chapter 37, Revised Statutes of Missouri, 1939, and every mutual mutual fire insurance

Honorable Charles A. Miller

company organized under the provisions of Article 6, Chapter 37, Revised Statutes of Missouri, 1939, shall, as hereinafter provided, annually pay, beginning with the year 1945, a tax upon the direct premiums received by it from policyholders in this state, whether in cash or in notes, or on account of business done in this state, for insurance of life, property or interest in this state, at the rate of two per cent (2%) per annum, * * *"

(Underscoring ours.)

You will note that Title Insurance Companies have been specifically included in this statute imposing the direct premium tax of two per cent.

Section 4997.135, Missouri R.S.A., provides for the imposition of the Missouri franchise tax. We find the following exemption contained therein:

"* * * Provided, that this law shall not apply to corporations not organized for profit, nor to express companies, which now pay an annual tax on their gross receipts in this state, and insurance companies, which pay an annual tax on their premium receipts in this state: * * *"

(Underscoring ours.)

Further, with respect to reports required to be filed, we find the following contained in Section 4997.136:

"Every corporation liable to the tax prescribed in the foregoing section shall make a report in writing to the State Tax Commission annually on or before the first day of March in such form as said Commission may prescribe. * * *"

(Underscoring ours.)

From the foregoing it appears that Title Insurance Companies, organized under the provisions of Article 17, Chapter 37, R. S. Missouri, 1939, have been exempted from liability to make a return and pay the Missouri franchise tax.

Honorable Charles A. Miller

We are further advised, however, that many companies engaged in the title insurance business and qualified under Article 17 of Chapter 37, R. S. Missouri, 1939, also engage in other businesses, particularly that of the preparation of abstracts, certificates to abstracts, and other similar activities. We understand that this portion of the business of such companies is not strictly "title insurance" business.

It, therefore, seems that a corporation having as a part of its charter power the right to engage in "title insurance" business may be exempted from the Missouri franchise tax only to the extent of the portion of its assets necessarily and actually used in connection with this phase of its business, and that if such corporation engages in other business, it will remain liable for the payment of Missouri franchise tax based upon the value of its assets used in such other business. What has been said heretofore with respect to the exemption from the Missouri franchise tax of title insurance companies paying the two per cent direct premium tax is equally applicable to all other insurance companies paying such direct premium tax.

CONCLUSION

In the premises we are of the opinion that Title Insurance Companies, organized under the provisions of Article 17, Chapter 37, R. S. Missouri, 1939, which pay a two per cent direct premium tax upon premiums collected for policies of insurance, are exempted from filing a return and the payment of any Missouri franchise tax.

We are further of the opinion that if such corporations engage in other business activities, such corporations are liable to file the return required and pay the Missouri franchise tax upon such portion of the assets of such corporation as are employed in such other business.

We are further of the opinion that all insurance companies which are subject to the Missouri two per cent direct premium tax are relieved from the filing of a return and payment of Missouri franchise tax.

Respectfully submitted,

WILL F. BERRY, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

WFB/feh