

Opinion No. 18-2082

February 4, 1918

BY: C. A. HATCH, Assistant Attorney General

TO: Honorable Cleofes Romero, State Superintendent of Insurance, Santa Fe, New Mexico.

"Returned Premiums" Defined. Deduction of Returned Premiums by Insurance Companies in making Reports.

OPINION

We have your oral request for an opinion relative to whether or not an insurance company, in making its statement to your office, showing the amount of premiums collected for the purpose of taxation, is allowed to deduct the premiums collected by it for reinsurance and the premiums paid by it for reinsurance.

Section 2810 of the 1915 Codification provides as follows:

"All insurance companies, partnerships or associations engaged in the transaction of the business of insurance in this State shall annually, on or before the 1st day of February in each year, pay to the superintendent of insurance two per centum on the gross amount of premiums received, less returned premiums within this State, during the year ending the previous 31st day of December; and insurance companies shall be subject to no other taxation than herein provided, except upon real estate."

From the foregoing quotation you see the only permission given an insurance company to deduct any premiums, is that such company is permitted to deduct returned premiums. There is no mention made anywhere in the statute of deduction for reinsurance. The language of the statute quoted shows the intention of the legislature to require payment on all premiums collected, except those specifically allowed to be deducted, which are returned premiums. Unless premiums paid or received for reinsurance comes within the term "returned premiums," we doubt whether it is permissible or proper to allow deductions on account of such payments or receipts.

The term "returned premiums" has a very definite and settled meaning in insurance circles. It means where a policy is cancelled, either by the request of the insured, or upon the action of the company, and the premium and the unearned portion of the premium, originally collected, is sent back to the insured. In view of this meaning, we do not think it can be said that the premium paid or collected for reinsurance, comes within this meaning. This being true, an insurance company would not be permitted to deduct the amount it pays or receives for reinsurance.

We are reminded that one company has raised the question with your office as to whether or not such a course as contemplated by the above conclusion would constitute double taxation. In this connection you are advised that your department is charged with the enforcement of the laws as enacted by the legislature. We do not think you would be justified in holding that the method prescribed by the legislature in this particular, constitutes double taxation, for the reason that the question is a very close one and should not be determined adverse to the State, except by judicial determination.

We, therefore, conclude that it is proper for you to require insurance companies to pay upon all premiums collected by them, whether they be for reinsurance or other regular business, and the only deduction allowed is that mentioned in the statute -- returned premiums.

The letters submitted with your request are herewith returned.