**Opinion No. 36-1347**

April 6, 1936

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. John D. Bingaman, Commissioner of Revenue, Santa Fe, New Mexico. Attention: Mr. L. D. Sparks, Director Income Tax Division.

*{*112}* We have your letter of April 2, 1936, in which you ask for an interpretation of Section 29 of Chapter 85, Laws of 1933, as amended by Section 3, Chapter 29, Laws of 1934, which reads as follows:

"Sec. 3. That Section 29 of Chapter 85 of the Session Laws of 1933 be amended to read as follows:

'Section 29. Corporations Liable to the Income Tax. Every domestic corporation and every foreign corporation doing business in this State shall pay a tax for each taxable year upon its entire net income derived from business done or property located in this State, except insurance companies, reciprocal or inter-insurance exchanges which pay a premium tax to the State as provided by law, banks, banking associations and trust companies, mutual building and loan associations or companies, and religious, educational, benevolent and other corporations not organized or conducted for pecuniary profit'."

The particular question in which you are interested is whether or not under this statute a domestic insurance company which does not pay a premium tax to the state should pay the state income tax.

This question involves an interpretation of the statute above quoted. The answer to your question depends upon what particular antecedent or antecedents are qualified by the clause "which pay a premium tax to the state as provided by law." Under the general rule of statutory construction this clause would apply only to the next preceding antecedent but this rule is not invariable and must yield to the obvious meaning and intent of the legislature if that is apparent.

The premium tax referred to above is imposed by Section 71-127, 1929 Compilation. It will be noted that this premium tax is imposed upon foreign insurance companies and "reciprocal or inter-insurance exchanges" are not mentioned specifically in said section. It will follow that reciprocal or inter-insurance exchanges would not have to pay a premium tax unless they be included within the term "foreign insurance company." If we construe Section 29 above quoted in a strictly grammatical sense, it would *{*113}* have the following result: all foreign insurance companies are exempt from payment of the income tax and reciprocal or inter-insurance exchanges which pay a premium tax (only such exchanges as are foreign insurance companies are subject to the tax) are also exempt from the payment of the tax. This would be a repetition. In other words, foreign

insurance companies in the same section of the law are twice exempted from payment of the income tax.

On the other hand, the legislature undoubtedly had a good reason for exempting from the payment of the income tax only insurance companies which paid a premium tax. Since domestic insurance companies do not pay a premium tax, there seems to be no apparent reason why they should not pay the income tax. From all the foregoing it seems apparent to me that the legislature only intended to exempt from payment of the income tax insurance companies which paid to the state a similar tax on their net receipts derived from business done in this state. It will be noted that the premium tax is in many respects similar to the income tax except that it is two per cent (2%) instead of one per cent (1%) and except that deductions are not allowed for operating expense and other such items.

It seems to me that it was the intention of the legislature to avoid, if possible, imposing two taxes of an almost identical nature on the same class of taxpayers. Consequently, I am of the opinion that the statute you inquire about should be so construed that domestic insurance companies who do not pay a premium tax to the state should pay the income tax.

By QUINCY D. ADAMS,

Asst. Atty. General