

Opinion No. 43-4249

March 10, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. R. F. Apodaca, Superintendent of Insurance, State Corporation Commission, Santa Fe, New Mexico

We are in receipt of your letter of March 5, 1943, in which you relate the following situation:

An insurance company, which I assume to be a foreign company, collected \$ 8,051.43; returned to the policy holder \$ 8,022.02, and received \$ 25.85 for re-insurance on New Mexico risks. The company thus, in its report, shows taxable gross premiums in a minus sum of \$ 194.44.

In view of the foregoing, you ask an opinion of this office as to whether, under Section 60-401 of the 1941 Compilation, this company is entitled to a credit in the sum of 2% of \$ 194.44, amounting to \$ 3.87, to be deducted from either the \$ 50.00 fee for annual license to transact business, or the \$ 50.00 fee for filing the annual statement.

The section above referred to provides for various fees to be paid by insurance companies, including a \$ 50.00 fee for filing annual statement, and a \$ 50.00 fee for annual license to transact business. It further provides as follows:

"Every foreign insurance company licensed to transact an insurance business in the state of New Mexico shall also pay annually on or before the first day of March of each year, for the privilege of doing business in the state of New Mexico, two (2) per centum of the gross premiums received by it from policies covering risks within the state during the preceding calendar year, less all return premiums and premiums received for reinsurance on New Mexico risks."

You will note, first of all, that the items are entirely separate and distinct, and bear no relation to each other; that the section above quoted provides that they shall **also** pay annually * * *, and that the 2% tax is levied only on foreign insurance companies.

In view of the foregoing, it is my opinion that the insurance company involved cannot deduct the sum of \$ 3.89 from any of the other fees they are required to pay.

Trusting that the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General