

INSURANCE: Income on contracts of Old Reliable Atlas Life  
TAXATION: Society, a stipulated premium plan company,  
assumed under reinsurance contract by Old  
American Insurance Company, but not reissued,  
is not subject to premium tax provided in  
Section 148.370 RSMo 1949 (Cumulative Supple-  
ment, 1953.)



*May 4, 1955*

Honorable C. Lawrence Leggett  
Superintendent of the Division of Insurance  
Department of Business and Administration  
Jefferson Building  
Jefferson City, Missouri

Dear Mr. Leggett:

This opinion is rendered in reply to your request read-  
ing as follows:

"The Old American Insurance Company,  
a regular life insurance company of  
Missouri, reinsured effective Novem-  
ber 1, 1954, all of the business of  
the Old Reliable Atlas Life Society  
of Springfield, Missouri, a stipu-  
lated premium plan life insurance  
company.

"The contract of reinsurance is en-  
closed herewith for your information,  
together with a copy of the Assump-  
tion Certificate issued by the Old  
American Insurance Company.

"I respectfully request your official  
opinion as to the liability of the  
Old American Insurance Company for  
the payment of premium taxes under  
Section 148.320, Revised Statutes of  
Missouri 1949, on the money received  
by it on account of the business of  
the Old Reliable Atlas Life Society  
assumed under said Contract of Re-  
insurance and Assumption Certificate."

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Supplementing your original request, quoted above, you informed this office that "Section 148.320" shown in the third paragraph of such request should read Section 148.370 RSMo 1949.

The contract of reinsurance between Old American Insurance Company and Old Reliable Atlas Life Society discloses that the latter company was organized in Missouri and operated as a stipulated premium plan company under the provisions of Sections 377,200 to 377.460 RSMo 1949, at the time the contract of reinsurance was entered into. As recently as August 30, 1954, this office ruled that stipulated premium plan companies organized in Missouri under the provisions of Sections 377,200 to 377.460 RSMo 1949 are not subject to the premium tax provided for in Section 148,370 RSMo 1949. The question to be resolved in this opinion is whether the contract of reinsurance, coupled with the assumption certificates issued, cause the income on such contracts assumed by the Old American Insurance Company, a regular life company, to be subject to the premium tax statute, Section 148.370 RSMo 1949 (Cumulative Supplement, 1953) which statute provides:

"Every insurance company or association organized under the laws of the state of Missouri and doing business under the provisions of sections 376.010 to 376.670, 379.205 to 379.310 and chapter 381, RSMo, and every mutual fire insurance company organized under the provisions of sections 379.010 to 379.190 RSMo, 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 per annum, which amount of taxes shall be assessed and collected as hereinafter provided; provided, that fire and casualty insurance companies or associations shall be credited with canceled or returned premiums actually paid during the year in this state, and that life insurance companies shall be credited with dividends

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actually declared to policyholders in this state but held by the company and applied to the reduction of premiums payable by the policyholder."

Article VIII of the contract of reinsurance states in plain language what Old American Insurance Company proposes to do in relation to the reinsured risks, and we quote such article as follows:

"OLD AMERICAN shall grant an assumption of risk rider on each reinsured risk. Such rider shall be delivered to the policyholder or mailed, postage prepaid, to his address as shown on the SOCIETY'S records, and shall, among other things, recite that the premium rate on his or her contract of insurance has not and will not be increased over the premium rate therefor in force as of the risk assumption time."

The assumption certificate issued by the Old American Company to each policyholder reinsured contains the essential provisions found in Article VIII of the contract of reinsurance quoted above.

Under the provisions of Section 377.260 RSMo 1949, an insurance company organized on the stipulated premium plan is required to set aside an emergency fund to guarantee policy obligations, and subparagraph 2 of such statute provides:

"2. If by any reason of excessive mortality, or other cause, the emergency fund as thus constituted shall become exhausted, then the superintendent of insurance shall require the officers of such corporation, company or association to notify all policyholders on or before the first of the next succeeding month to pay, within thirty days from the mailing of such notice, an extra premium, sufficient to meet the amount of the maximum policy issued apportioned equitably."

Section 148.370 RSMo 1949 (Cumulative Supplement, 1953) is Missouri's premium tax statute directed to domestic insurance

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companies. Such statute has its counterpart in Section 148.340 RSMo 1949, a statute imposing a premium tax on foreign insurance companies doing business in Missouri. No appreciable difference exists between the two statutes as they are both directed to "direct premiums received" by the companies. Insofar as the latter statute, Section 148.340 RSMo 1949, is to be applied to "premiums received" by a foreign insurance company doing business in Missouri, as distinguished from "assessments," the Supreme Court of Missouri in the case of Bankers' Life Co. v. Chorn, 186 S. W. 681, l.c. 684, spoke as follows:

"\* \* Having in mind this intrinsic distinction between the purpose and object of the section under review (R. S. 1909, Sec. 7099) this court, in banc, in the decision referred to, decided that the Legislature, in imposing this duty of 2 per cent, upon the 'premiums' received by foreign insurance companies, merely exercised its power 'to impose a license or occupation tax on insurance companies'; and hence the enactment for that purpose became properly part and parcel of the special code provided by our law for regulating the business of foreign and domestic insurance, and that the terms of the act disclosed, however, that it was only applicable to companies insuring for fixed or level premiums, and not to those doing business on the assessment plan. \* \* \*" (Underscoring supplied.)

In construing Section 148.340 RSMo 1949, the Supreme Court of Missouri in Young v. Life Insurance Company, 277 Mo. 694, l.c. 699, spoke as follows:

"No such tax was demandable, under the statutes and decisions of this State, by any company doing business on the assessment plan."

We adopt the rulings of the Supreme Court in the two cases cited above, and hold that such rulings are to be applied to Section 148.370 RSMo 1949 (Cumulative Supplement, 1953) because of the similarity of the two taxing statutes, in being addressed to "direct premiums received."

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The only question remaining is whether the provision for additional assessments on policyholders in a stipulated premium plan company, as set forth in subparagraph 2 of Section 377.260 RSMo 1949, heretofore quoted, will cause contracts of such a company to be on the "assessment plan" and not to be within the premium tax statute. In Moran v. Franklin Life Insurance Company, 160 Mo. App. 407, l.c. 421, we find the following statement:

"It is sufficient for the purposes of this suit that we may deduce from such decisions the conclusion that even though a policy contains provision for fixed and defined sums to be paid at certain intervals, still if such payments do not form the only resource for the payment of the benefit and are not necessarily sufficient for that purpose, but by the terms of the contract shall be supplemented, if necessary, by an assessment which shall be levied by some designated person or body, and be directed against and binding upon persons holding similar contracts, then such policy meets the requirement of the statute under consideration. \* \* \* It is not necessary for us to decide that a policy may not be an assessment contract unless it meets every requirement above mentioned; but we do hold that if it does meet all such requirements it is certainly an assessment contract.\*\*\*"

#### CONCLUSION

It is the opinion of this office that the premium tax to be levied on domestic insurance companies under Section 148.370 RSMo 1949 (Cumulative Supplement, 1953), is not to be directed to the income on contracts of Old Reliable Atlas Life Society, a stipulated premium plan company, which have been assumed and taken over, but not reissued, by Old American Insurance Company, a regular life company, pursuant to a contract of reinsurance entered into under authority contained in Section 376.520 RSMo 1949.

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The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton  
Attorney General

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