

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 606*
Committee Substitute Favorable 5/4/93
Senate Finance Committee Substitute Adopted 7/21/93

Short Title: Settlement Award/Premium Tax.

(Public)

Sponsors:

Referred to:

March 29, 1993

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT INSURANCE POLICIES OR CONTRACTS THAT ARE ISSUED IN CONNECTION WITH THE FUNDING OF PERIODIC PAYMENTS OF WORKERS' COMPENSATION OR LITIGATION AWARDS OR SETTLEMENTS ARE EXEMPTED FROM THE PREMIUM TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.5 reads as rewritten:

"§ 105-228.5. Taxes measured by gross premiums.

(a) Every insurance company and every corporation subject to Articles 65 and 66 of Chapter 58 of the General Statutes shall pay to the Commissioner of Insurance, at the time and rates provided in this section, a tax measured by gross premiums from business done in this State during the preceding calendar year, or, for corporations subject to Articles 65 and 66 of Chapter 58 of the General Statutes, a tax measured by gross collections from membership dues, exclusive of receipts from cost plus plans, received by such corporations during the preceding calendar year.

(b) Gross premiums from business done in this State in the case of life insurance and annuity contracts, including any supplemental contracts thereto providing for disability benefits, accidental death benefits, or other special benefits, shall for the purposes of the taxes levied in this section mean any and all premiums collected in the calendar year (other than for contracts for reinsurance) for policies the premiums on which are paid by or credited to persons, firms or corporations resident in this State, or

1 in the case of group policies for any contracts of insurance covering persons resident
2 within this State, with no deduction for considerations paid for annuity contracts which
3 are subsequently returned except as below specified, and with no other deduction
4 whatsoever except for premiums returned under one or more of the following
5 conditions: premiums refunded on policies rescinded for fraud or other breach of
6 contract; premiums which were paid in advance on life insurance contracts and
7 subsequently refunded to the insured, premium payer, beneficiary or estate; and in the
8 case of group annuity contracts the premiums returned by reason of a change in the
9 composition of the group covered. Said gross premiums shall be deemed to have been
10 collected for the amounts as provided in the policy contracts for the time in force during
11 the year, whether satisfied by cash payment, notes, loans, automatic premium loans,
12 applied dividend or in any other manner whatsoever, except in the case of premiums
13 waived by any of said companies pursuant to a contract for waiver of premium in case
14 of disability.

15 (c) An insurer, in computing its premium taxes, shall pay premium taxes on a
16 premium for the purchase of annuities at the time the contract holder elects to
17 commence annuity benefits, instead of at the time the premium is collected.

18 (d) Every insurer, in computing the premium tax, shall exclude from the gross
19 amount of premiums all premiums received ~~on or after July 1, 1973,~~ from policies or
20 contracts, issued in connection with the funding of a pension, annuity or profit-sharing
21 plan, qualified or exempt under ~~sections 26~~ U.S.C. § 401, 403, 404, 408, 457 or ~~501 of~~
22 ~~the Code as defined in G.S. 105-134.1(1)-501,~~ or issued in connection with the funding of
23 periodic payments that are excludible from the gross income of the recipient under 26
24 U.S.C. § 104(a)(1) or 104(a)(2); and the gross amount of all such premiums shall be
25 exempt from the tax levied by this section.

26 (e) ~~Gross premiums from business done in this State in the case of contracts for fire~~
27 ~~insurance, casualty insurance, and any other type of insurance except life and annuity~~
28 ~~contracts as above specified, specified in subsection (d) of this section,~~ including
29 contracts of insurance required to be carried by the Workers' Compensation Act, shall
30 for the purposes of the taxes levied in this section mean any and all premiums written
31 during the calendar year, or the equivalent thereof in the case of self-insurers under the
32 Workers' Compensation Act, for contracts covering property or risks in this State, other
33 than for contracts of reinsurance, whether such premiums are designated as premiums,
34 deposits, premium deposits, policy fees, membership fees, or assessments. Gross
35 premiums shall be deemed to have been written for the amounts as provided in the
36 policy contracts, new and renewal, becoming effective during the year irrespective of
37 the time or method of making payment or settlement for such premiums, and with no
38 deduction for dividends whether returned in cash or allowed in payment or reduction of
39 premiums or for additional insurance, and without any other deduction except for return
40 of premiums, deposits, fees or assessments for adjustment of policy rates or for
41 cancellation or surrender of policies.

42 (f) In determining the amount of gross premiums from business in this State all
43 gross premiums received in this State, or credited to policies written or procured in this
44 State, or derived from business written in this State shall be deemed to be for contracts

1 covering persons, property or risks resident or located in this State except for such
2 premiums as are properly reported and properly allocated as being received from
3 business done in some other nation, territory, state or states, and except for premiums
4 from policies written in federal areas for persons in military service who pay premiums
5 by assignment of service pay.

6 (g) The tax rate to be applied to gross premiums collected on contracts applicable
7 to liabilities under the Workers' Compensation Act shall be two and five-tenths percent
8 (2.5%). The tax rate to be applied to gross premiums collected on annuities and all
9 other insurance contracts issued by insurers shall be one and eight hundred seventy-five
10 thousandths percent (1.875%) for taxable years beginning on or after January 1, 1991,
11 and before January 1, 1992, and one and nine-tenths percent (1.9%) for taxable years
12 beginning on or after January 1, 1992. The tax rate to be applied to amounts collected
13 on contracts of insurance applicable to fire and lightning coverage (except marine and
14 automobile policies) shall be one and thirty-three hundredths percent (1.33%) in
15 addition to the above tax. Twenty-five percent (25%) of the net proceeds of the one and
16 thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of
17 insurance applicable to fire and lightning coverage shall be deposited in the Rural
18 Volunteer Fire Department Fund established in Articles 84 through 88 of Chapter 58 of
19 the General Statutes. Effective July 1, 1988, the tax rate to be applied to gross
20 premiums and/or gross collections from membership dues, exclusive of receipts from
21 cost plus plans, received by corporations subject to Articles 65 and 66 of Chapter 58 of
22 the General Statutes ~~corporations~~ shall be one-half of one percent (1/2 of 1%).

23 (h) ~~The taxes levied herein in this section are measured by premiums and/or~~
24 ~~membership dues shall be in lieu of all other taxes upon insurance companies and~~
25 ~~corporations subject to Articles 65 and 66 of Chapter 58 of the General Statutes~~ except:
26 fees, charges, and licenses under this Article, or as specified in Articles 1 through 64 of
27 Chapter 58 of the General Statutes of North Carolina as amended; ~~Statutes;~~ taxes imposed
28 by Articles 84 through 88 of Chapter 58 of the General Statutes of North Carolina;
29 ~~Statutes;~~ taxes imposed by Article 5 of Chapter 105 of the General Statutes of North
30 Carolina as amended; ~~Statutes;~~ and ad valorem taxes upon real property and personal
31 property owned in this State.

32 (i) For the tax ~~above~~ levied in this section as measured by gross premiums and/or
33 gross collections from membership dues exclusive of receipts from cost plus plans the
34 president, secretary, or other executive officer of each insurance company and
35 corporation subject to Articles 65 and 66 of Chapter 58 of the General Statutes
36 ~~corporation~~ doing business in this State shall within the first 15 days of March file with
37 the Commissioner of Insurance a full and accurate report of the total gross premiums as
38 above defined or the total gross collections from membership dues exclusive of receipts
39 from cost plus plans collected in this State during the preceding calendar year. The
40 report shall be in such form and contain such information as the Commissioner of
41 Insurance may specify, and the report shall be verified by the oath of the company
42 official transmitting the same or by some principal officer at the home or head office of
43 the company or association in this country. At the time of making such report the taxes
44 ~~above~~ levied in this section ~~with respect to the gross premiums or the gross collections from~~

1 ~~membership dues~~ shall be paid to the Commissioner of Insurance. ~~The provisions above~~
2 ~~shall likewise apply as~~ This section applies as to reports and taxes for any firm,
3 corporation, or association exchanging reciprocal or interinsurance contracts, and ~~said~~
4 ~~those~~ reports and taxes shall be transmitted by their attorneys-in-fact.

5 (j) Insurance companies and corporations subject to Articles 65 and 66 of
6 Chapter 58 of the General Statutes ~~corporations that are~~ subject to the tax imposed by
7 this section ~~with and that have~~ a premium tax liability of ten thousand dollars (\$10,000)
8 or more for business done in North Carolina during the immediately preceding year
9 shall remit three equal quarterly installments with each installment equal to at least
10 thirty-three and one-third percent (33 1/3%) of the premium tax liability incurred in the
11 immediately preceding taxable year. The quarterly installment payments shall be made
12 on or before April 15, June 15, and October 15 of each taxable year. The company shall
13 remit the balance by the following March 15 in the same manner provided in this
14 section for annual returns.

15 (k) The Commissioner of Insurance may, by regulation, administrative rule, permit an
16 insurance company or a corporation subject to Articles 65 and 66 of Chapter 58 of the
17 General Statutes to pay less than the required estimated payment when the insurer
18 reasonably believes that the total estimated payments made for the current year will
19 exceed the total anticipated tax liability for the year.

20 (l) If a company does not meet the installment payment requirement of
21 subsection (j) of this section, the Commissioner of Insurance shall assess a penalty on
22 underpayments that is equal to the interest rate adopted by the Secretary of Revenue
23 under G.S. 105-241.1(i). Any overpayment shall be credited to the company and
24 applied against the taxes imposed upon the company under this Article.

25 (m) ~~The provisions as to reports and taxes as measured by gross premiums shall~~ This
26 section does not apply to farmers' mutual assessment fire insurance companies or to
27 fraternal orders or societies that do not operate for a profit and do not issue policies on
28 any person except members.

29 (n) With respect to the taxes levied in subsection (e) of this section on the
30 equivalent of premiums of self-insurers under the provisions of the Workers'
31 Compensation Act, the reports required ~~herein in this section~~ shall be transmitted to and
32 the taxes collected by the ~~Insurance~~ Commissioner of Insurance as provided in G.S. 97-
33 100(j)."

34 Sec. 2. This act is effective for taxable years beginning January 1, 1993.