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Robert R. Corbin

June 3, 1985

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ARIZONA ATTORNEY GENERAL

Mr. S. David Childers, Director  
Department of Insurance  
1601 West Jefferson  
Phoenix, Arizona 85007

RE: I85-076 (R85-063)

Dear Mr. Childers:

You have asked for our opinion on whether an insurance company in receivership pursuant to A.R.S. §§ 20-611 et seq. is required to file corporate income tax returns, or pay Arizona state income taxes if, during the period of the receivership, the company has not transacted insurance, but has earned interest income which exceeds expenses. In our opinion, the Director of Insurance, acting as receiver, does not have to pay state income tax on earned interest income nor file a state corporate income tax return.

Two statutes relevant to our discussion are A.R.S. § 43-1201 and A.R.S. § 20-226. A.R.S. § 43-1201.14 provides:

The following organizations are exempt from the taxes imposed under this title, except as otherwise provided in this chapter:

\* \* \*

14. Insurance companies paying to the state tax upon premium income derived from sources within this state.

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A.R.S. § 20-226 provides as follows:

A. With respect to authorized insurers the premium tax provided by § 20-224 shall be payment in full and in lieu of all other demands for any and all state, county, district, municipal and school taxes, licenses and excises of whatever kind or character, excepting only:

1. The fees prescribed by this title.
2. Taxes on real and tangible personal property located within this state.
3. The transaction privilege taxes, the education excise tax, the special excise tax for education and the use tax imposed as provided in title 42, chapter 8, articles 1, 1.1, 1.2 and 2.
4. The transaction privilege taxes and use taxes imposed by any county, city or town.

B. Except as provided in subsection A of this section, the state preempts the field of imposing excise, privilege, franchise, income, license and similar taxes upon insurers and their general agents and agents as such and on the intangible property of insurers or such agents. Except as provided in subsection A of this section, no county, municipality, district, school district or other political subdivision or agency in this state shall levy upon insurers, or upon their general agents and agents as such, any tax additional to such as are levied in this title. Nothing in this section allows a county, city or town to impose a transaction privilege tax or use tax on insurance policies, premiums, brokers or agents.

In Ariz. Atty. Gen. Op. No. 176-50, this office opined that insurance companies were not required to actually pay a

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premium tax in order to be entitled to exemption from Arizona corporate income tax as a result of the provisions in A.R.S. § 20-226. We reached that conclusion, in part, based upon the Arizona Supreme Court's decision in City of Tempe v. Prudential Insurance Company of America, 109 Ariz. 429, 510 P.2d 745 (1973). There, the Arizona Supreme Court was faced with the question whether the State Tax Commission could, prior to the 1974 amendment of A.R.S. § 20-226, levy the transaction privilege tax on Prudential Insurance Company for the rental of properties it owned. In holding that such taxation was precluded by A.R.S. § 20-226, the Court stated:

The legislative intent becomes clear in the construction of A.R.S. § 20-226 when it is considered that the section is part of a comprehensive and detailed program of statutory regulation of the insurance business. One of the areas of such regulation involves the type of investments which insurance companies may make. A.R.S. § 20-556, for example, regulates the type of real estate investments which may be made by insurance companies. It is clear from the provisions of this section and others that the legislature intended that the premium income not only be invested in a manner to protect policyholders but also for the production of income. Obviously, the legislature was aware that these investments would be another source of income to insurance companies in addition to premiums. With such knowledge, the statute in question, A.R.S. § 20-226, was enacted with its broad provisions, and we conclude that the legislature intended thereby to limit taxation of insurance companies to that provided in A.R.S. § 20-224 and taxes on the real and tangible personal property of such companies located within this state.

109 Ariz. at 431-32, 510 P.2d at 747-48 (emphasis added).

The Court concluded that the legislature intended to limit the tax liability of insurance companies to the taxes set forth in A.R.S. §§ 20-224 and 20-226. The state corporate

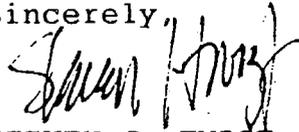
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income tax is not encompassed in the taxes set forth in A.R.S. § 20-226; consequently, insurance companies are exempt from the tax.

If an insurance company is subject to liquidation and placed into a receivership, it does not lose its character as an insurance company. A.R.S. § 20-611.7.<sup>1/</sup> Therefore, an insurance company in receivership is still subject to A.R.S. §§ 20-224 and 20-226 and it would not be liable for state corporate income tax.

A corporation is required to file a return only if it is subject to the taxes set forth in Title 43 of Arizona Revised Statutes. A.R.S. § 43-307.A.<sup>2/</sup> Because insurance companies are exempt from corporate income tax, they are not required to file a return.

Sincerely,



STEVEN J. TWIST  
Chief Assistant  
Attorney General

SJT:FQM:tb

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1. A.R.S. § 20-611.7:

'Insurer' means any person, firm, corporation, association or aggregation of persons doing an insurance business and subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization or conservation by the director or the equivalent insurance supervisory official of another state.

2. A.R.S. § 43-307.A:

Every corporation subject to the tax imposed by this title shall make a return to the department. Every corporation return required by this title to be filed with the department shall be signed by the president or other principal officer and the treasurer or chief accounting officer of the taxpayer.