

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**R E P O R T**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1949 - 1950**

May 27, 1949

To Ernest H. Johnson, State Tax Assessor  
Re: Section 139 of Chapter 14, R. S., as amended

Your memo received, with attached correspondence indicating that the State of Michigan taxes insurance premiums at the rate of 3% and Maine taxes such premiums at 2%, but that Maine imposes a fire investigation tax at one-half of 1%. Your question is:

"In view of the language of Section 139 of Chapter 14 (containing the retaliatory provision), in the case of a Michigan insurance company doing business in Maine, is the Michigan rate of 3% to be compared to the Maine base rate of 2%; or, as contended by the insurance company, should the Michigan rate be compared to the combined Maine base rate of 2% and the fire investigation tax rate of  $\frac{1}{2}\%$ ?"

You also refer to an unpublished opinion of mine dated February 2, 1945, in which I held that in the case of a Delaware company, in which State the rate is  $1\frac{1}{2}\%$  for the general premium tax and 2% for a fire department tax, the Delaware company was subject to a  $3\frac{1}{2}\%$  total tax in this State under the retaliatory provision.

After my opinion of February 2, 1945, Section 139 of Chapter 14 was repealed by Chapter 118, Section 3, P. L. 1945, and restored under Chapter 15, Section 3, P. L. 1947.

The original Section 139 of Chapter 14 in the fourth line had this provision: "in place of the tax provided in section 137," which now reads: "in place of the tax provided in any other section of this chapter," which means Chapter 14 as amended.

It is my opinion that the Michigan rate should not be compared with the combined Maine base rate of 2% and the fire investigation tax of  $\frac{1}{2}\%$ . In the Delaware case on which my opinion in 1945 was based, the State of Delaware taxed Maine companies  $3\frac{1}{2}\%$ , including a general premium tax of  $1\frac{1}{2}\%$  and a fire department tax of 2%. Of course, if Delaware was taxing Maine companies for a fire department tax, we should retaliate in the State of Maine; but if the other States do not charge us for a fire investigation or fire department tax, so-called, we should not charge the out-of-state companies our  $\frac{1}{2}\%$  investigation and prevention tax.

Michigan has a base rate of 3%, while Maine has a base rate of 2%. It is my opinion that the retaliatory provision, which was re-enacted in 1947, applies only to the tax levied under the provisions of Chapter 14, as stated in the Act, and does not apply to the service tax levied under the provisions of Section 29 of Chapter 85, as amended, as that tax can be suspended at the discretion of the Insurance Commissioner, when he certifies to your office that the special tax is to be omitted because an accumulation in the special fund has created a surplus sufficient to defray the expenses of such investigations and inspections for a period of one year. However, the premium tax returns must be made at the same time and in the same manner as provided in Section 136 of Chapter 14.

Therefore Michigan should be assessed only the 3% tax under our retaliatory law.

RALPH W. FARRIS  
Attorney General