

**Opinion No. 42-4166**

October 10, 1942

**BY:** EDWARD P. CHASE, Attorney General

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

{\*258} We are in receipt of your letter of October 9, 1942 in which you inquire whether or not membership fees paid to the Mutual Benefit Health and Accident Association of Omaha Nebraska, as set up in Mr. Harry J. Aden's letter to you dated October 5, 1942, are subject to taxation under Chapter 23, Laws of 1939, as well as the premiums paid to this association. Insofar as is pertinent here Chapter 23, Laws of 1939, provides:

"\* \* \* 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 per centum of the gross premiums received by it from policies covering risks with the State during the preceding calendar year less all return premiums and premiums received for reinsurance on New Mexico risks. \* \* \*"

It will be seen that the two per centum tax is imposed only on gross premiums. The definition of premium as used in law and the business of insurance is, "the consideration for a contract of insurance" whether called on initiation fee, admission fee, membership fee or by any other name, the consideration is none the less strictly a premium. See Bov. Law Dict., Web. Dict. also N. W. Life Ass'n vs. Stout, 32 Ill. App. 31.

It is, therefore, my opinion that if the membership fees mentioned in Mr. Aden's letter are paid as a part of the consideration for the issuance of the insurance contracts they are premiums and taxable as such under Chapter 23, Laws of 1939. However, if the membership fees are paid to defray expenses of the association for purposes apart from the insurance business, these membership fees are not taxable.

I am not in a position to determine whether or not the membership fees are, in fact, paid as a part of the consideration for the contracts of insurance without further information as to the disposition of these membership fees. Therefore, if this letter does not adequately answer your question, {\*259} please forward to me a copy of the Articles of Incorporation and the By-Laws of this association with your further inquiry.

By ROBERT W. WARD,

Asst. Atty. General