

**Opinion No. 44-4563**

August 25, 1944

**BY:** C. C. McCULLOH, Attorney General

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

In your letter dated August 16, 1944 you state that the Bankers' Union Life Insurance Company of Denver, Colorado has made gross premium tax returns and paid taxes for the years 1939 to 1943 inclusive. As a result of an audit recently made, it has been discovered that during these years the company has made an over-payment in the total sum of \$ 101.62. You request an opinion of this office concerning your ability to refund this amount or to credit the amount upon subsequent taxes due.

The general rule pertaining to voluntary payments of taxes is that in the absence of constitutional or statutory authority taxes cannot be refunded and no credit can be allowed since they can only be paid in money and any agreement that a pre-existing claim may be offset against subsequent taxes is of no effect.

In this connection, see 11 A.L.R. 1177 and 41 A.L.R. 1110.

In view of the fact that Section 60-401 of the 1941 Compilation provides for a privilege tax of 2% of the gross premiums and no provision is made for a refund, I am of the opinion that this over-payment cannot be refunded, nor can you allow a credit of the amount on subsequent taxes.