

## OPINION NO. 75-073

**Syllabus:**

R.C. 5729.02 provides that dividends paid or otherwise allowed to policyholders are not to be excluded in computing the gross amount of premiums. (1937 Op. Att'y Gen. No. 649 affirmed.)

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**To: Harry V. Jump, Director, Dept. of Insurance, Columbus, Ohio**  
**By: William J. Brown, Attorney General, October 16, 1975**

I have before me your request for my opinion which reads as follows:

"This Department requests your opinion on whether the 'gross amount of premium' used as a basis for computing taxes on foreign insurance companies includes or excludes dividends on life insurance which are paid in the form of premiums on additional life insurance. Confusion on this issue arises from a conflict between a 1937 Attorney General's opinion and Ohio Revised Code §5729.02."

You pointed out in your request that 1937 Op. Att'y Gen. No. 649 interpreted the General Code Section [5432] which was the predecessor to R.C. 5729.02, although the language of R.C. 5729.02 has since been amended to read differently than its predecessor. Your question is whether the change in statutory language has any effect upon the interpretation provided by 1937 Op. Att'y Gen. No. 649.

R.C. 5729.02 states, in pertinent part:

"Every foreign insurance company shall set forth in its annual statement to the superintendent of insurance the gross amount of premiums received by it from policies covering risks within this state

during the preceding calendar year, less return premiums paid for cancellations and considerations received for reinsurance of risks within this state, provided that dividends paid or otherwise allowed to policyholders shall not be deducted. . . ."  
(Emphasis added.)

In 1937 Op. Att'y Gen. No. 649 my predecessor concluded that "gross amount of premiums" as used in G.C. 5432 did not include dividends returned in the form of premiums. G.C. 5432 read in pertinent part as follows:

"Every insurance company incorporated by the authority of another state or government, in its annual statement to the superintendent of insurance, shall set forth the gross amount of premiums received by it from policies covering risks within this state during the preceding calendar year, without any deductions whatever. . . ."  
(Emphasis added.)

The only essential difference between the two statutes is that R.C. 5729.02 allows two deductions; premiums paid for cancellations and considerations received for reinsurance of risks are excluded in computing the gross amount of premiums. G.C. 5432 allowed no deductions. The two statutes, however, treat dividends paid to policyholders the same. Thus, by implication, the dividends could not be deducted under G.C. 5432 and, now, R.C. 5729.02 specifically prohibits their deduction.

Because the treatment of dividends has not changed, the definition of "gross premiums" with respect to the dividends is the same. The term "gross premiums" means the gross premiums stipulated on the face of the policies. State, ex rel. North-western Mutual Life Insurance Co. v. Tomlinson, 99 Ohio St. 233 (1919).

Consequently, the treatment of the dividends when computing the gross premiums tax must also remain unchanged.

I affirm the opinion of my predecessor that dividends paid in the form of premiums on additional life insurance may not be added to the premium stipulated on the face of the policy for the purpose of computing a tax on the "gross amount of premiums" received by foreign life insurance companies. This approach avoids a double taxation of the dividends. The statute prohibits the deduction of the dividends from the gross premiums figure. This means that the dividends compose part of the figure on which the tax is computed. The dividends are taxed because they cannot be deducted. Otherwise, if dividends paid as premiums were added to the gross amount of premiums, the dividends would be taxed twice.

In specific answer to your question, it is my opinion and you are so advised that R.C. 5729.02 provides that dividends paid or otherwise allowed to policyholders are not to be excluded in computing the gross amount of premiums. (1937 Op. Att'y Gen. No. 649 affirmed.)