

No. A08-429

STATE OF MINNESOTA
IN SUPREME COURT

Stewart Title Guaranty Company,

Relator,

vs.

Commissioner of Revenue,

Respondent.

RESPONDENT'S BRIEF

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LEGAL ISSUES

- I. Whether Minnesota's insurance premium tax applies to the entire amount of title insurance premium collected by a title insurance agent, or only applies to that portion of the premium that is remitted by the agent to the title insurance company.

The tax court held that the entire amount of title insurance premium is subject to Minnesota's insurance premium tax.

Minn. Stat. § 60A.15 (1998)

Minn. Stat. § 297I.01 (2000)

Minn. Stat. § 297I.05 (2000)

STATEMENT OF THE CASE

Stewart Title Guaranty Company (“Stewart Title”) is a foreign corporation that sells title insurance in Minnesota. It is undisputed that Stewart Title is subject to Minnesota’s insurance premium tax. See Minn. Stat. § 60A.15 (1998) (for tax year 2000) and Minn. Stat. § 297I.05 (2002) (for tax years 2001 and 2002). Although Stewart Title timely filed Minnesota Insurance Premium Tax returns for tax years 2000, 2001 and 2002, it did not include the amount of policy premium retained by “non-direct agents” in its calculation of taxable “gross premiums.” Sometime after 2002, the Commissioner of Revenue (“Commissioner”) completed an audit of Stewart Title and assessed \$402,654.09 in additional tax, penalty and interest for tax years 2000, 2001 and 2002. *See* Commissioner’s Appendix (“C.A.”) at 41 (Order Determining Tax Liability, dated June 20, 2004). Stewart Title timely filed an administrative appeal, and the Commissioner issued an adverse Notice of Determination on Appeal on January 21, 2005. C.A. 8 to 10 (Notice of Determination). Stewart Title timely filed a Notice of Appeal with the Minnesota Tax Court on April 15, 2005. C.A. 5 to 6 (Notice of Appeal).

The parties entered into a stipulation of facts, and submitted the case to the Honorable Kathleen H. Sanberg, Judge of Minnesota Tax Court, on cross motions for summary judgment. R.A. 10 to 102 (Stipulation of Facts (“Stip.”)); R.A. 125 to 145, 160 to 163 (Commissioner’s S. J. Memo. and Reply Memo.); R.A. 103 to 124, 146 to 159 (Stewart Title’s Brief and Reply Brief). The parties’ dispositive motions came on for hearing on July 18, 2007, and the tax court requested supplemental briefing. R.A. 164 to 169 (Commissioner’s Response); R.A. 170 to 178 (Relator’s Suppl. Brief).

By Order dated January 9, 2008, the tax court granted the Commissioner's motion for summary judgment and denied Stewart Title's cross motion for summary judgment. R.A. 179 to 198 (Tax Court Order 1/9/2008). Stewart Title timely petitioned the Court for a Writ of Certiorari. R.A. 202 to 203 (Pet. for Writ and Writ of Cert.).

STATEMENT OF THE FACTS

Stewart Title Guaranty Company ("Stewart Title") is a Texas corporation with its principal place of business in Houston, Texas. R.A. 10 (Stip. ¶ 3). Stewart Title has been engaged in the title insurance business for over 100 years, and insures and indemnifies buyers and lenders of real estate against covered title defects. R.A. 10 (Stip. ¶ 3). Stewart Title is licensed and authorized by the Minnesota Department of Commerce to write title insurance in the State of Minnesota. R.A. 10 (Stip. ¶ 8).

Stewart Title contracts with agents that are licensed insurance producers pursuant to Minn. Stat. §§ 60K.30 to 60K.56 (2006) to distribute its title insurance. R.A. 11 (Stip. ¶ 9). In addition to selling title insurance, Stewart Title's agents typically provide title-related services to purchasers of real estate and to lenders. R.A. 11 (Stip. ¶ 9).

During the tax years at issue, Stewart Title contracted with approximately 100 "unaffiliated agents" and two wholly-owned "affiliated agents" in Minnesota. R.A. 12 (Stip. ¶¶ 13, 14, 15). Stewart Title's "unaffiliated agents" are separate and distinct legal entities that do not have common officers or directors with Stewart Title. R.A. 12 (Stip. ¶ 16). Stewart Title's contracts with "unaffiliated agents" are identical, in all relevant respects, to contracts with "affiliated agents." C.A. 18 (2d Interrog. Resp. No. 2). A representative example of Stewart Title's "Title Insurance Underwriting Agreement" is

attached to the parties' Stipulation of Facts. R.A. 23 to 28 (Attach. 2.).

Pursuant to the "Title Insurance Underwriting Agreement," Stewart Title's agents are entitled to conduct title searches, analyze and evaluate what searches reveal, and issue written reports called "commitments." R.A. 11 (Stip. ¶ 12). When preparing commitments, and pursuant to the authority defined in their contract with Stewart Title, agents make risk assessment decisions that are part of an analytic and evaluative process that goes beyond inspecting records. R.A. 11 to 12 (Stip. ¶ 12). The commitment is used to define the terms and conditions under which the title is proposed to be insured, and, ultimately, the form the title insurance policy will take. R.A. 12 (Stip. ¶ 12).

Minnesota law requires that Stewart Title file its premium rates with the Minnesota Department of Commerce for each title insurance product it offers. R.A. 12 (Stip. ¶ 19). A typical filing might, for example, allow Stewart Title to charge customers \$4.00 title insurance premium for every \$1,000.00 of value in the properties that are subject of the insured transactions. R.A. 13 (Stip. ¶ 20). The quote a title insurance customer receives from an agent is consistent with the title insurance products and rates it has filed by with the Department of Commerce. R.A. 21 (Stip. ¶ 13).

At the time of closing on a transaction, agents disclose the title insurance premium to the customer on a HUD-1 settlement statement or other closing statement. R.A. 13 (Stip. ¶ 22). The amount listed on the closing statement for "title insurance" represents the total premium the agent collects from the customer for title insurance. R.A. 13 (Stip. ¶ 22).

At closing, agents may collect additional charges from title insurance customers for services such as abstracting, title searches, escrow, and closing services. R.A. 13 (Stip. ¶ 23). All additional charges are disclosed to the customer by means of separate entries on the closing statement. R.A. 13 (Stip. ¶ 23).

Stewart Title's agents collect the entire amount of title insurance premium charged to its customers at the time of closing. R.A. 13 (Stip. ¶ 24). The premium is consistent with the rate Stewart Title files with the Minnesota Department of Commerce. R.A. 21 (Stip. ¶ 13). Pursuant to their contracts with Stewart Title, agents retain a set percentage of the title insurance premium and remit the balance to Stewart Title. R.A. 13 to 14 (Stip. ¶¶ 24, 25). This "retained portion" typically represents 70-80% of the title insurance premium. R.A. 13 to 14 (Stip. ¶ 25). The portion of the premium sent to Stewart Title by its agent is to compensate Stewart Title for assuming risks consistent with the terms and conditions of the policy. R.A. 14 (Stip. ¶ 26). Stewart Title funds its insurance reserves and covers its own administrative and operating expenses from the portion of the premium sent to it by its agents. R.A. 14 (Stip. ¶ 26).

The portion of the premium that the agent retains comprises the total compensation for the agent's services in connection with the issuance of the title insurance policy. C.A. 119 (Tierney Depo., p. 47). The agent employs these amounts to perform, among other things, any and all duties required under the agent's contract with Stewart Title. C.A. 173 (Supp. Interrog. Resp. 2(c)).

The National Association of Insurance Commissioners (NAIC) is an organization comprised of the insurance regulators of the fifty states, the District of Columbia and the

four United States territories. R.A. 14 (Stip. ¶ 27). Each year Stewart Title is required to file an annual statement with NAIC. R.A. 14 (Stip. ¶ 28). A portion of this statement, informally known as “Schedule T,” consists of an exhibit displaying the reporting company’s total premium collections in each jurisdiction where it operates. R.A. 14 (Stip. ¶ 29).

NAIC instructs title insurers to include as “direct premiums written” the entire premium amount charged to consumers at closings, exclusive of escrow services, and regardless of whether only a portion of these premiums is remitted to the insurer. R.A. 14 (Stip. ¶ 30). For each year at issue in this case, Stewart Title reported the total insurance premiums its agents collected from customers in Minnesota on its Schedule T. R.A. 15 (Stip. ¶ 32). The amounts for those years are as follows:

Year	Direct Premiums Written
2000	\$ 3,851,526
2001	\$ 6,345,200
2002	\$ 12,244,307

R.A. 15 (Stip. ¶ 32).

Stewart Title timely filed Minnesota Insurance Premium Tax Returns with the Department of Revenue for each of the tax years at issue. R.A. 15 (Stip. ¶ 38). On each return, Stewart Title reported the total amount of title insurance premiums its agents collected from Minnesota customers and subsequently reported that figure on its Schedule T. R.A. 15 (Stip. ¶ 38). It then determined the amount it considered subject to Minnesota’s insurance premium tax by subtracting the portion of the premiums its agents retained. In other words, it is Stewart Title’s position that it is not subject to insurance

premium tax for premiums retained by its agents. In fact, its agent contract disclaims liability for tax on premium above the amount that agents remit to it. Stewart Title's calculation of premiums subject to taxation for each tax year at issue is as follows:

Stewart Title Guaranty Company
Basis for computing Premium Tax
State of Minnesota

Tax Year	2000	2001	2002
Total amount per Schedule T	\$ 3,851,527.00	\$ 6,345,200.00	\$ 12,244,307.00
Less premiums retained by non-direct agents	\$ 2,815,740.00	\$ 4,576,376.00	\$ 9,103,235.00
Total premiums subject to tax	\$ 1,035,787.00	\$ 1,768,824.00	\$ 3,141,072.00

Stewart Title has occasionally issued title insurance policies directly to customers without the involvement of agents. C.A. 180 to 81 (2d. Interrog. Resp. No. 4). In such situations, Stewart Title admits the entire amount of premiums collected by it to be subject to Minnesota's insurance premium tax. C.A. 181 (2d. Interrog. Resp. No. 4).

The Commissioner's position is that the entire amount of insurance premiums that Stewart Title's agents collect are subject to Minnesota's insurance premium tax. R.A. 16-17 (Stip. ¶ 41). Consistent with this position, the Commissioner determined that Stewart Title was liable for additional premium taxes and interest for tax years 2000, 2001 and 2002. R.A. 4 to 6 (Notice of Determination on Appeal). With interest updated through December 31, 2006, the Commissioner asserts that Stewart Title is liable to the State of Minnesota as follows:

Year	Tax	Interest	Annual Total
2000	\$56,314.54	\$18,682.55	\$74,997.09
2001	\$91,528.00	\$22,498.35	\$114,026.35
2002	\$182,065.14	\$32,746.82	\$214,811.96
Total	\$329,907.68	\$73,927.72	\$403,835.40

R.A. 16-17 (Stip. ¶ 41).

STANDARD OF REVIEW

Review of tax court decisions is limited to whether the court had jurisdiction, whether its decision was justified by the evidence and in conformity with the law, or whether it committed any other error of law. *See* Minn. Stat. § 271.10, subd. 1 (2006); *Hutchinson Technology, Inc. v. Commissioner of Revenue*, 698 N.W.2d 1, 6 (Minn. 2005). The Court upholds tax court’s decision “where sufficient evidence exists for the tax court to reasonably reach the conclusion it did.” *Hutchinson Tech., Inc. v. Comm’r of Revenue*, 698 N.W.2d 1, 6 (Minn. 2005) (quoting *Green Giant Co. v. Comm’r of Revenue*, 534 N.W.2d 710, 711 (Minn. 1995)). The tax court’s conclusions of law and interpretation of statutes are reviewed *de novo*. *See Chapman v. Comm’r of Revenue*, 651 N.W.2d 825, 830 (Minn. 2002); *A&H Vending Co. v. Comm’r of Revenue*, 608 N.W.2d 544, 546-47 (Minn. 2000).

ARGUMENT

I. THE INSURANCE PREMIUM TAX APPLIES TO THE TOTAL AMOUNT PAID FOR A TITLE INSURANCE POLICY, REGARDLESS OF THE AMOUNT OF PREMIUM AN AGENT REMITS TO THE INSURER.

Insurers like Stewart Title are subject to Minnesota’s insurance premium tax. Minn. Stat. § 60A.15, subd. 1 (1998), prescribes the insurance premium tax applicable for tax year 2000. Subdivision 1(a) specifies that the tax is “equal to 2% of the premiums

described in paragraph (b).” Subdivision 1(b) defines “premiums” as “gross premiums less returned premiums on all direct business received by the insurer in this state, or by its agents for it, in cash or otherwise, during [the] year.” The term “gross premiums” is not defined by Minn. Stat. § Chapter 60A or any applicable statute. However, the trial court utilized standard dictionary definitions to determine that the phrase unambiguously means “total consideration paid for a contract of insurance.” *See* Tax Court Order, p. 4.¹

The insurance premium tax was first enacted in Minnesota in 1868. *See* Minn. General Laws, 1868, Chapter XXII, Sec. 2. As originally drafted, the statute referred to “premiums” rather than “gross premiums.” *Id.* The Legislature amended the statute to include the term “gross premiums” in 1907. *See* General Laws, 1907, Chapter 321--H.F. No. 446, Sect. 1, 1625.² Significantly, the Committee of the Whole House rejected use of term “net premiums” in favor of “gross premiums.” *See* THE JOURNAL OF THE HOUSE, March 1, 1907, p. 500. Discussing the topic generally, the authors of the 1956 REPORT OF THE GOVERNOR’S MINNESOTA TAX STUDY COMMITTEE, p. 441, suggest that state

¹ *See also* RUPP’S INSURANCE & RISK MANAGEMENT GLOSSARY (NILS Pub. 1991) (gross premium: “Insurer Operations. The entire premium charged by an insurer to a policyholder which includes all of the insurer’s expenses, estimated loss costs and profits.”); WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED (Merriam-Webster 1993) (gross premium: “the sum of the net premium in insurance and the load”).

² Walford Cornelius’s THE INSURANCE CYCLOPÆDIA, p. 564, published between 1871 and 1880, defines “gross premium valuation” as “a technical term used to express a mode of actuarial valuation of the assets of Life Offices wherein the whole of the prem. (therefore including the “loading” for expenses) is brought into account, as against the “Net” system of valuation, which excludes the loading.” Thus the definition of “gross premium” has not changed over the period Minnesota’s insurance premium tax has been in effect.

governments strongly preferred a “gross premium” basis for taxing insurance companies due to the inherent difficulties in ascertaining taxable net income for many classes of insurance companies.

In any event, in April 2000, the Legislature recodified Minnesota’s insurance tax provisions in Minn. Stat. Chapter 297I. *See* 2000 Minn. Laws Ch. 394. The goal of this recodification was “to simplify Minnesota’s insurance tax laws by consolidating and recodifying tax administration and compliance provisions . . . contained throughout Minnesota Statutes chapter 60A and elsewhere . . .” 2000 Minn. Laws Ch. 394, Art. 1, Sec. 21. The new statutory tax scheme took effect for returns due on or after January 1, 2001. *Id.*

For tax years 2001 and 2002, Minn. Stat. § 297I.05, subd. 1 (2000), specified that the premium tax was “equal to 2% of all gross premiums, less return premiums, on all direct business received by the insurer or agents of the insurer in Minnesota in cash or otherwise during the year.” Chapter 297I.01 defined “gross premium” in relevant part as follows:

For title insurance companies, "gross premiums" means the charge for title insurance made by a title insurance company or its agents according to the company's rate filing approved by the commissioner of commerce without a deduction for commissions paid to or retained by the agent. Gross premiums of a title insurance company does not include any other charge or fee for abstracting, searching, or examining the title, or escrow, closing, or other related services.

Minn. Stat. § 297I.05, subd. 9 (2000).³

A legislative bulletin attached to the Stipulation of the Parties indicates that the 2000 recodification was not meant to significantly alter the scope of the insurance premium tax. R.A. 99 to 102 (Stip. Attach. 8). Stewart Title does not appear to contend otherwise. Therefore, it is the Commissioner's position that at all relevant times, the applicable statutes impose a 2% annual tax on all amounts received by a title insurance company or its agents in payment of charges for title insurance, as set by the rate schedules filed with the Commissioner of Commerce, without a deduction for any commission the agents receive or retain. In addition, it is the Commissioner's position that the statutory scheme expressly excludes from a title insurance company's premium tax base any separate fees or charges made by the insurer or its agents to pay the cost of title searches, escrow, closing or other related services provided by the agent.

Minn. Stat. § 645.16 (2006) provides that "the object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions. When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded" This is "the most basic rule of statutory construction." *Green Giant Co. v. Comm'r of Revenue*, 534 N.W.2d 710, 712 (Minn. 1995). Thus, "[n]o room for judicial construction exists when the statute speaks for itself [and] is crystal clear." *Comm'r of Revenue v. Richardson*, 302 N.W.2d 23, 26 (Minn.

³ Since 2000, the Legislature has not made material changes to these provisions that are relevant to determination this case.

1981). Rather than accepting “attempts to circumvent the direct and plain language of the statutes at issue, a court “must give effect to plain statutory language.” *Hutchinson Technology, Inc. v. Comm’r of Revenue*, 698 N.W.2d 1, 8 (Minn. 2005).

We need go no further to resolve the case at bar. During the relevant period Stewart Title sold the bulk of its title insurance policies in Minnesota through affiliated or non-affiliated agents. R.A. 12 (Stip. ¶¶ 13, 14, 15). In each instance the agent collected various itemized charges from the customer, one of which was the premium for the title insurance policy as determined by Stewart’s rate filing with the Minnesota Commissioner of Commerce. R.A. 13 (Stip. ¶ 23). For each year Stewart Title reported total receipts of these premiums on its Schedule T filed with NAIC. R.A. 14 (Stip. ¶ 28). For each year these total premium receipts were precisely what Minn. Stat. § 297I.01, subd. 9, and its predecessor defined as “gross premiums” for tax purposes. Minn. Stat. §§ 60A.15, subd. 1 (1998) and 297I.05, subd. 1 (2000) expressly levied the premium tax on the entirety of these amounts.

In support of its contention that agent-retained portions of title insurance premiums are excludable from the premium tax base, Stewart Title appears to argue that in order to be taxable, a premium payment must first come into physical possession of the insurance company issuing the policy. *See* C.A. 5 to 6 (Notice of Appeal ¶ 9); R.A. 15 to 16 (Stip. ¶ 38). This contention overlooks crucial statutory language. Under Minn. Stat. § 60A.15, subd. 1(b) (1998), the tax is applied to “gross premiums . . . received by the insurer . . . or by its agents for it . . . during such year.” (Emphasis Added). Similarly, Minn. Stat. § 297I.01, subd. 9 (2000), defines a title insurance premium for tax purposes

as “the charge for title insurance made by a title insurance company or its agents . . . without a deduction for commissions paid to or retained by the agent.” (Emphasis Added). Neither provision can reasonably be read, as Stewart Title suggests, to make the taxability of a premium payment dependent upon how the insurer and its agent choose to conduct their accounting.

Stewart Title seemingly would not dispute that the entire premium payment would be subject to insurance premium tax if Stewart Title’s method of operation during the relevant period required its agents to remit 100% of the premiums collected to Stewart Title, and then Stewart Title would pay back the percentage owed to the agent as determined by the terms of their contract. Yet, Stewart Title contends that the result should be different here solely because the agent simply retains the amount due it in the first instance. If accepted, Stewart Title’s theory would produce an absurd result — one presumably not intended by the Legislature. *See* Minn. Stat. § 645.17(1) (2006) (Legislature does not intend absurdity). It would also impermissibly exalt form over substance. *See, e.g. Larson v. Comm’r of Revenue*, 581 N.W.2d 25, 28 (Minn. 1998); *Midwest Fed. Sav. & Loan Ass’n v. Comm’r of Revenue*, 259 N.W.2d 596, 599 (Minn. 1977) (all condemning such exaltations). This Court should not accept Stewart Title’s interpretation of the insurance premium tax statute.

Further, the reporting requirements of Schedule T embody an established distinction in the title insurance field. On the one hand the customer pays a title insurance premium to compensate the insurer and its agent for the risks they assume in issuing the policy. On the other, the customer pays a separate charge for title search, examination,

and related services. These latter services do “not [themselves] spread or transfer risk.” *Ticor Title Ins. Co. v. FTC*, 998 F.2d 1129, 1134 (3d. Cir. 1993), *cert denied*, 510 U.S. 1190 (1994). Therefore, no portion of the premium collected relates to these activities and they are not properly excluded from application of the insurance premium tax. Indeed, insurance tax recodification in 2000 indicates that the Minnesota Legislature recognized this distinction. Minn. Stat. § 2971.01, subd. 9, specifically provides that the total charges by an insurer or its agents for issuance of the policy are taxable, but that charges for examination and related services are not.

In the present case, the parties stipulated that at the closing of a transaction in which Stewart Title has agreed to issue a title insurance policy, the customer ordinarily receives an itemization of charges that separates out title search and other closing services from the charge for the title insurance premium itself. R.A. 13 (Stip. ¶ 23). Thus, there can be no doubt concerning what portion of the total amount is actually taxable premium. The identified title insurance premium will be subject to tax, but the separately stated charges for title searches and other related services will be non-taxable under the insurance premium tax.

Stewart Title seems to suggest that agents do not always charge separately for non-taxable title related services, and sometimes are compensated for such services through the portion of title insurance premium that they retain. *See* C.A. 173 (Supp. Interrog. Resp. 2(c)). However, neither Stewart Title’s premium tax returns nor any other documentation quantifies what portion, if any, of the retained premiums are exempt from

the insurance premium tax. Instead, Stewart Title broadly asserts that all agent-retained premiums are tax exempt. This claim is untenable.

“Under a contract of insurance, the premiums or assessments paid by the insured constitute the consideration . . . for the obligations assumed by the insurer; and the risk of incurring liability assumed by the insurer constitutes the consideration . . . for the premiums . . .” *Nat’l Council of Knights and Ladies of Security v. Garber*, 131 Minn. 16, 17, 154 N.W. 512, 513 (1915). During the period in question, Stewart Title’s customers paid designated premiums to compensate Stewart Title and its agents for assuming insurance risks. Any expenditure by Stewart Title’s agents of such premium receipts to pay the cost of title examination or related services neither comport with Stipulation ¶ 23 nor render those receipts exempt. R.A. 13 (Stip. ¶ 23). Any contrary claim has no merit.

Stewart Title emphasizes the relative complexity of the tasks its agents perform in connection with the issuance of a title insurance policy. R.A. 21 (Stip. ¶ 12); C.A. 100 to 102 (Tierney Depo., pp. 28-30). The complexity of these tasks may well suggest that a title insurance agent should receive, as compensation for the agent’s services, a greater portion of premium collections than is customarily received by agents selling other types of insurance. For these reasons, Stewart Title’s agents retained 70-80% of the title insurance premiums they collected during the periods in question. R.A. 13 (Stip. ¶ 24). Yet, this phenomenon has nothing to do with whether the portion of the title insurance premiums retained by the agents should or should not be subject to the insurance premium tax.

When an agent prepares to issue one of Stewart Title's policies, the agent invariably conducts or oversees the conduct of a title search and performance of escrow and related services. According to Stipulation ¶ 12, the agent and Stewart Title engage in a collaborative analysis of the results of the title search, culminating in the issuance of a title commitment. R.A. 12 (Stip. ¶ 12). These activities go well beyond the mere inspection of records characteristic of a title search. They are instead part and parcel of the risk analysis process. The premium for the resulting title insurance policy reflects the cost of this analysis. There is no plausible basis for suggesting that the entire premium should not be part of Stewart Title's premium tax base.

Stewart Title's tax treatment of premiums it received directly from customers it wrote policies for without the assistance of an agent during the periods in question, confirms the propriety of the Commissioner's assessment. The title search, follow-up evaluation and other tasks required in connection with those instances are presumably indistinguishable from the comparable tasks associated with policies are issued through agents. Yet, Stewart Title concedes that the entirety of these direct premium receipts are subject to the premium tax. Under Minnesota's tax structure, the same result should follow for policies issued through Stewart Title's agents.

Decisions from other jurisdictions dealing with similar questions fully support the Commissioner's assessment in the present case. In *Stuyvesant Insurance Co. v. State Tax Commission*, 39 A.D.2d 804, 805, 332 N.Y.S.2d 314, 316 (1972), the court sustained the applicability of New York's insurance premium tax to portions of bail bond premiums retained by agents, stating, "the sum sought to be taxed herein is an integral part of the

charge for a bail bond, as such is a premium . . . and is taxable” See also *Inter-County Title Guaranty and Mortgage Co. v. State Tax Commission*, 28 N.Y.2d 179, 269 N.E.2d 585 (1971) (upholding inclusion of certain title search costs in a title insurance company’s tax base); *Groves v. City of Los Angeles*, 40 Cal.2d 751, 256 P.2d 309 (1953) (rejecting claim that portions of bail bond premiums retained by agents were not “insurance premiums,” subject to state’s exclusive taxing authority).

Two recent decisions overturning tax assessments against title insurance companies contradict Stewart Title’s contentions in the present case. In *First American Title Ins. Co. v. State Department of Revenue*, 144 Wash.2d 300, 27 P.3d 604 (2001) the court invalidated the imposition of what amounted to a double excise tax on both an insurance company and its agents. Here the Commissioner seeks to tax a title insurance premium only once. Similarly, in *Stewart Guaranty Title Company v. State Tax Assessor*, 2005 WL 2723026 (Me. Super. Ct. May 5, 2005) (R.A. at 204 to 206), the court rejected the State’s efforts to extend the Maine insurance premium tax to charges for title search and conceivably other services which the Court viewed as unrelated to the provision of insurance. Even if this decision were binding, it would not be helpful to Stewart Title. Unlike Minn. Stat. §§ 60A.15, subd. 1(b) and 297I.01, subd. 9, the statute at issue in the Maine case neither imposed the premium tax on amounts collected by agents nor foreclosed deduction from the insurer’s tax base of premiums retained by agents to pay the cost of commissions or other insurance-related services. Moreover, the Maine Court appeared to be primarily concerned with the perceived unfairness of imposing the premium tax on the cost of title searches and similar services for which

neither the agent nor the insurer received any direct benefit. In contrast, the Minnesota statutory scheme expressly excludes the cost of such services from a title insurer's premium tax base.

II. PREMIUMS RETAINED BY STEWART TITLE'S AGENTS ARE INSURANCE COMMISSIONS THAT MUST BE INCLUDED IN ITS INSURANCE PREMIUM TAX BASE.

Minn. Stat. § 297I.01, subd. 9 (2000) prohibits deduction from a title insurer's premium tax base of amounts representing commissions paid to or retained by agents. Minn. Stat. § 60A.15, subd. 1(b) (1998), did not specifically foreclose exclusion of agent commissions from the insurer's premium tax base for the 2000 taxable year, but the definition of taxable premiums found in that statute had similar effect.

Stewart Title nonetheless asserts that premiums retained by its agents cannot be viewed as "commissions" for this purpose. The Court should reject this assertion. A commission is "a fee paid to an agent or employee for a particular transaction, usually as a percentage of the money received from the transaction." BLACKS LAW DICTIONARY (8th Ed. 2004), pp. 286-87. In the instant case Stewart Title's agents retained contractually-stipulated percentages of policy premiums. These retained amounts constituted the entirety of the agents' compensation for their services in connection with issuance of Stewart Title's policies. That is what commissions are. In enacting Minn. Stat. § 297I.01, subd. 9 (2000), the Legislature undoubtedly intended the word "commission" to be used in this commonly-accepted sense. *See* Minn. Stat. § 645.08(1) (2006). The Court should adopt that construction here.

III. NONE OF THE PREMIUMS RETAINED BY STEWART TITLE'S AGENTS SHOULD BE CONSIDERED A "CHARGE OR FEE FOR . . . OTHER RELATED SERVICES."

The entire amount of the retained portion of the title insurance premium collected from Stewart Title customers is a component of "gross premium" as defined in Minn. Stat. § 297I.01, subd. 9 (2000). That is, none of the retained portion is a "charge or fee for . . . other related services" performed by Stewart Title agents.

The amounts retained by title agents are included in gross premiums because they are not within the phrase "charge[s] or fee[s] for . . . other related services" in the last sentence of the definition of "gross premiums" at Minn. Stat. § 297I.01, subd. 9 (2000). The clear and unambiguous meaning of the statute as applied to the undisputed facts of this case confirms the correctness of the Commissioner's assessment. "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the Legislature. Every law shall be construed, if possible, to give effect to all its provisions." Minn. Stat. Sec. 645.16 (2006). "When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." *Id.* "In construing the statutes of this state, the following canons of interpretation are to govern, unless their observance would involve a construction inconsistent with the manifest intent of the Legislature, or repugnant to the context of the statute: . . . (3) general words are construed to be restricted in their meaning by preceding particular words" Minn. Stat. Sec. 645.16 (2006).

As noted previously, Minn. Stat. § 297I.05 (2000), specifies that the premium tax is "equal to two percent of all gross premiums, less return premiums, on all direct

business received by the insurer or agents of the insurer in Minnesota in cash or otherwise during the year,” and defines “gross premium” in relevant part as follows:

for title insurance companies, gross premiums means charge for title insurance made by a title insurance company or its agents according to the company’s rate filing approved by the commissioner of commerce, without a deduction for commissions paid to or retained by the agent. Gross premiums of a title insurance company do not include any other charge or fee for abstracting, searching or examining of the title, or escrow, closing or other related services.

See Minn. Stat. § 297I.05, subs. 1 and 9 (2000).

Given the undisputed facts in this case, the plain and unambiguous meaning of the Minn. Stat. § 297I.01, subd. 9 is that the entire amount charged customers for “title insurance” is “gross premium” subject to the premium tax. The entire amount charged for title insurance is the exact amount Stewart Title represents to customers they will be the charged for title insurance. *See* R.A. 13 (Stip. ¶ 21). It is the exact amount that is separately listed as a charge for “title insurance” on the closing statement, and it is the *only* amount that is consistent with Stewart Title’s rate filing with the commissioner of commerce. *See* R.A. 13 (Stip. ¶¶ 21, 22). Because the agent’s “retained portion” is a percentage of “the entire title insurance premium charged to the customer,” none of the retained portion can be a “charge or fee for . . . other related services.” *See* R.A. 13 (Stip. ¶ 24). *All* of the retained portion is a component of the charge for title insurance.

Even if the parties did not already agree that the amount listed on the closing statement for “title insurance” represents the total consideration agents collect from customer for title insurance (and therefore, no other service), other undisputed facts also

make it clear that no part of the retained portion is “a charge or fee for . . . other related services.” R.A. 13 (Stip. ¶ 22).

It is undisputed that the agents separately charge for “abstracting, Title Search, escrow, and closing.” R.A. 13 (Stip. ¶ 23). Minnesota Statutes § 297I.01, subd. 9, specifically excludes charges for “abstracting, searching or examining of the title, or escrow, closing . . . services” from the definition of gross premiums. The parties agree that the title search “is an examination of records . . . in the chain of title,” and that each of the particular statutory exclusion for agent services are separately charged for and collected by the agent by means of separate entries on the closing statement. R.A. 11, 13 (Stip. ¶¶ 10, 24). Additionally, the parties agree that if the agent “collect[s] other charges for services provided by the Agent to the customer,” then the fees for such services “are also disclosed to the customer by means of entries on the Closing Statement.” R.A. 13 (Stip. ¶ 24).

Given these undisputed facts, the Court need not even resort to the canon of statutory construction that “general words are construed to be restricted in their meaning by preceding particular words.” Minn. Stat. § 645.16. The general word, “related,” in the phrase “other related services,” does not even apply to the undisputed facts of this case. Stewart Title agrees that all other services that are not title insurance (whether related to the particular services excluded by Minn. Stat. § 297I.01, subd. 9, or not), “are also disclosed to the customer by means of entries on the Closing Statement.” R.A. 11, 13 (Stip. ¶¶ 24). Stated another way, if the agent charges for a service other than title insurance, the charge is separately stated from title insurance on the closing statement.

Thus, the retained portion is a portion of the charge for title insurance and no other service.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the decision below.

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