

Summary of SC89064, *American National Life Insurance Company of Texas v. Director of Revenue and Director of Insurance*

Petition for review of a decision of the Administrative Hearing Commission.

Attorneys: American National was represented by Andrew J. Mytelka, Richard S. Brownlee III and Keith A. Wenzel. The directors of revenue and insurance were represented by James R. Layton and Mark W. Stahlhuth.

This summary is not part of the opinion of the Court. It has been prepared by the Communications Counsel for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: An insurance company appeals the administrative hearing commission's decision that stop-loss policy premiums – purchased by employers to protect them from liability for large health insurance expenses under self-funded health benefit plans – are subject to a statutory tax on direct premiums received. In a 7-0 decision written by Judge William Ray Price Jr., the Supreme Court of Missouri affirms the commission's decision. The stop-loss premiums are direct premiums subject to the tax, and the statute imposing the tax is constitutional as applied to the insurance company.

Facts: American National Life Insurance Company of Texas sells stop-loss insurance policies in Missouri to employers who maintain self-funded health benefit plans, under which the employers pay health care expenses for their employees. The employees do not pay a specific amount to the employers for the benefits; rather, the employers buy stop-loss insurance policies – in which the insurer reimburses the employers for large expenses that exceed a specific amount – to limit their liability. From 2001 to 2003, American National did not report stop-loss policy premiums as direct premiums and did not pay the direct premium tax specified in section 148.340, RSMo 2000. In 2004, the department of insurance notified American National that the premium tax was recertified and that the amount due was \$10,668 for 2001; \$6,246 for 2002; and \$7,377 for 2003. American National paid the tax under protest and filed a claim for a refund, which the department of revenue denied. On review, the administrative hearing commission found American National was not entitled to a refund because the stop-loss policy premiums were direct premiums that are subject to the premium tax in section 148.340. American National appeals.

AFFIRMED.

Court en banc holds: (1) The stop-loss premiums are subject to tax under section 148.340, which imposes a tax on the "direct premium received" by insurers. Although "direct premium" is not defined in that statute or cases interpreting it, using the dictionary definitions of the two words, the meaning is clear and consistent with the state's general

policy of not double-taxing an event: A tax on "direct premiums received" is imposed on the consideration an insured pays to an insurer for an insurance contract. The tax is imposed when the insurer makes the initial and direct payment to the primary insurer but is not reimposed when the primary insurer cedes the risk and pays a second premium to a reinsurer. Section 148.340 neither imposes a tax on insurance nor exempts reinsurance from tax. The employer does not collect any specific sums from the employees for the health care benefit, and no tax on the benefit is imposed by section 148.340 on either the employer or the employees. The first premium paid and subject to tax under the statute is that the employer pays to American National.

(2) The direct premium tax in section 148.340 is constitutional as applied to American National. It does not violate equal protection because all insurance companies are taxed on the direct premiums received. Further, because American National is a corporation, it is not subject to the privileges and immunities clause of the federal constitution, and because it is an insurance company, it is not subject to the commerce clause.