



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

January 5, 1962

Honorable William A. Harrison  
Commissioner of Insurance  
International Life Building  
Austin 14, Texas

Opinion No. WW-1234

Re: The correct method of valuing  
real estate in calculating the  
tax rate under the provisions  
of Article 7064, V. C. S.

Dear Mr. Harrison:

You have asked for our opinion with regard to whether or not the reasoning and conclusion of Attorney General's Opinion S-200 is applicable to real estate investments held by a foreign insurance corporation taxable under Article 7064, V. C. S.

Article 7064, V. C. S., in general, taxes insurance companies other than life, health, and accident companies on the basis of the amount of gross premiums received upon property or risks located in Texas. The amount of this tax, normally figured at a rate of 3.85%, may be reduced if the company had invested in "Texas securities" as defined therein from 75% to 100% of the amount that it had invested in "similar securities" in the state in which it then had the highest percentage of its admitted assets invested. (The actual rate being determined by the percentile relation between the two amounts invested in accordance with the formula set out in Article 7064.) Under this statute, it obviously becomes necessary for valuations to be made of the foreign company's investments.

The inquiry answered by Opinion S-200 was directed at an investment in corporate stock and concerned whether or not market value or actual cost of acquisition was to be used in determining the proper basis of valuation. The opinion held that the purchase price was the correct figure to be used as to corporate stock.

Your current request informs us that since the issuance of S-200 the State Board of Insurance has maintained that the "amount invested" in foreign real estate is the amount actually expended by the company for its original acquisition plus the amount expended for all subsequent improvements. Your request is prompted by the fact that an insurer is urging that the depreciated value of the realty should be used instead.

We have concluded that the correct basis for evaluation of a real estate investment under Article 7064 is its market value. "Texas Securities" are specifically defined by Article 7064 to include real estate in this State. Turning to the portions of the Insurance Code particularly applicable to the type of companies covered by this article, we find, for example, that Article 6.08 authorizes fire and marine companies to hold and convey real estate "for the erection and maintenance of buildings at least ample and adequate for the transaction of its own business," with the further qualification that: "Not more than 33-1/3% of its admitted assets shall be invested by such insurance company in real estate." That the latter does not refer simply to a "cost" figure is shown by the last paragraph of Article 6.08 which provides "The value of real estate mentioned . . . shall be appraised by two or more competent and disinterested citizens of Texas appointed by the Board of Insurance Commissioners of Texas." The amount invested in real property under Article 6.08 is thus determined by its market value. We can find no language in Article 7064 indicating the Legislature there intended a different meaning. General casualty companies are, by Article 8.18 of the Insurance Code, made subject to Article 6.08.

Life insurance companies offer an analogous situation. They also are taxable on their gross premiums, by virtue of Article 4769, V. C. S., the rate being reducible depending on the percentile relationship between its investments in Texas securities and its similar securities in the state in which it had its highest percentage of admitted assets invested. "Texas Securities" for life insurance companies are defined by Article 3.34 of the Insurance Code to include "the purchase of not more than one building site, and in the erection thereon of not more than one office building, or in the purchase, at its reasonable market value, of such office building, already constructed and the ground upon which same is located. . ." The article proceeds by allowing all real estate owned by life companies in this State prior to 1910 to be treated as a Texas security "to the extent of its reasonable market value." Appraisals are provided for, as in the case of fire and casualty companies, by Article 3.40, V. C. S., which likewise contains a restriction regarding real estate investments of over 33-1/3% of the admitted assets of the company.

In addition, the Legislature, in 1955, amended Article 1.15, Sec. 2, to read as follows:

"The Board of Insurance Commissioners in administering any provision of the Insurance Code, Acts

1951, Fifty-second Legislature, Chapter 491, shall be authorized and empowered in determining 'value' or 'market value' of any investment in or upon real estate or the improvements thereon by any carrier authorized to do business in the State of Texas to consider any and all matters and things relating thereto, including but not restricted to, appraisals by real estate boards or other qualified persons, affidavits by other persons familiar with such values, tax valuations, cost of acquisition, with proper deductions for depreciation and obsolescence, cost of replacement, sales of other comparable property, enhancement in value from whatever cause, income received or to be received, improvements made or any other factor or any other evidence which to said Board may be deemed proper and material. "

Thus, we see that the Legislature intended that the real estate investments authorized by the Code were to be treated in the same manner insofar as their evaluation is concerned regardless of the type of company involved; that the determinative figure is to be that commonly referred to as "market value" and that such figure is to be arrived at by the methods set out in Article 1.15. This should obviously be the figure utilized for tax purposes under Article 7064, as it has been under Article 4769 for life companies. There is nothing in the Code to warrant a different treatment for tax purpose as between life companies and those affected by Article 7064.

We find that the Insurance Code contains no provisions comparable to Article 1.15 prescribing the method of evaluating securities other than real estate. We, therefore, reaffirm Opinion S-200 insofar as it relates to valuation of investments in corporate stocks.

#### SUMMARY

In calculating the tax rate under the provisions

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of Article 7064, V. C. S., real estate investments  
should be valued at their market value.

Very truly yours,

WILL WILSON  
Attorney General of Texas

By Bob E. Shannon  
Bob E. Shannon  
Assistant Attorney General

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APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman  
Martin DeStefano  
Fred B. Werkenthin  
Joe B. McMasters  
William Allen

REVIEWED FOR THE ATTORNEY GENERAL  
BY: Houghton Brownlee, Jr.