July 9, 1951     (OPINION)

INSURANCE

RE:  Premium Tax

We have your inquiry concerning the communication received by you
under date of June 30, from Mr. Harlie Spencer, Examiner of the
Indiana Department of Insurance, Zone 4 N.A.I.C.

Mr. Spencer states that in a convention examination of the Equitable
Life Assurance Society, it has been found that neither payroll
deductions from employees' salaries or contributions made by the
society for the society's retirement plans have been allocated to the
various states as taxable premiums on schedule "T".  He further
states that the society contends that the retirement plan is not
embodied in a group annuity contract inasmuch as such a contract has
never been issued covering this plan.

He further states that individual certificates are issued to the
employees and contain the provision "This individual certificate is
furnished in accordance with and subject to the terms and conditions
of the Plan, which constitutes the entire contract between the
parties."  Such a plan is then embodied in a brochure issued by the
society.

The examiners contend that the amounts paid for the retirement plan
constitute premiums subject to tax under the laws of most states in
which annuity premiums are taxable, and Mr. Spencer asks for our
opinion in this matter in the light of premium tax law of North
Dakota.

You are advised that originally the premium tax law of North Dakota,
before the advent of the Revised Code, consisted of section 4924 of
the 1925 Supplement to the 1913 Compiled Laws and stated as follows:

> Every insurance company doing business in this state, except
> exchange, stock and mutual companies, originated under the laws
> of this state, shall at the time make an annual statement of
> business done as required by law, and pay to the commissioner
> of insurance 2 1/2 percent of the gross amount of premiums
> received in this state during the preceding year.  Upon the
> payment of such sum the commissioner of insurance shall issue
> the annual certificates provided by law."

During the year 1938 there came before the Supreme Court on appeal
the case of State of North Dakota and Oscar E. Erickson, Commissioner
of Insurance of the State of North Dakota v. Equitable Life Assurance
Society of the United States, 68 N.D. 641, 282 N.W.411, in which this
insurance company contended it was not liable to pay a 2 1/2 percent
premium tax on annuity contracts.  The Supreme Court, after
considering the appeal from the district court and held, in effect,
that the words "gross amount of premiums" applied only to premiums on

life insurance contracts and not to considerations paid for
annuities.

Shortly thereafter, in fact, at the next legislative session, chapter
160, section 1, 1939 Session Laws, was enacted which provided for a
tax equal in amount to 2 1/2 percent of the gross amount of premiums,
considerations for annuities, membership fees and policy fees
received in this state during the preceding year, such tax to be
payable at the time when the annual statement of business required by
law is filed.  This is now section 26-0111, 1943 N.D.R.C.

From this change the legislative intent becomes very clear, and we
must hold that all considerations paid for annuities to foreign
companies doing business in this state are subject to the 2 1/2
percent of the gross amount of premiums.

Now, then, if the Equitable Life Assurance Society enters into an
agreement with an employee within this state whereby upon and after a
certain effective date it agrees to pay monthly or periodical
payments to the employee and charges the employee a certain amount of
his salary, which is withheld on a payroll deduction plan, then such
amount is paid as a consideration for an annuity and the company must
pay the tax of 2 1/2 percent of the gross premiums so paid by the
employee.

We do not, however, consider the company's contribution to the
retirement fund as a "consideration for an annuity" and it is our
opinion therefore that only the part paid by the payroll deduction is
taxable.

ELMO T. CHRISTIANSON

Attorney General