



**User Name:** Nicole Myers

**Date and Time:** Thursday, February 8, 2018 1:33:00 PM EST

**Job Number:** 61038123

## Document (1)

1. [Colorado Nat'l Life Assurance Co. v. Clayton, 54 Colo. 256](#)

**Client/Matter:** LegiSoruice

**Search Terms:** 54 Colo. 256 at 259

**Search Type:** Natural Language

**Narrowed by:**

**Content Type**  
Cases

**Narrowed by**  
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## Colorado Nat'l Life Assurance Co. v. Clayton

Supreme Court of Colorado

January 24, 1913, Decided

No. 7218.

### Reporter

54 Colo. 256 \*; 130 P. 330 \*\*; 1913 Colo. LEXIS 180 \*\*\*

COLORADO NATIONAL LIFE ASSURANCE CO. v.  
CLAYTON, COMMISSIONER OF INSURANCE.

**Subsequent History:** [\*\*\*1] Rehearing Denied March 3, 1913.

**Prior History:** *Error to Denver District Court.* -- Hon. GREELEY W. WHITFORD, Judge.

### Core Terms

exemption, percent, premiums, license, insurance company, legislative intent, revenue measure, regulation, inducement, annually

### Case Summary

#### Procedural Posture

In an action for a refund of a tax on premiums paid under protest, plaintiff in error insurance company sought review of the judgment of the Denver District Court (Colorado) in favor of defendant in error Colorado Commissioner of Insurance.

#### Overview

The Act of 1907 (Colorado) required all insurance companies to pay to the Commissioner two percent on the gross amount of premiums received within the State during the previous year. The insurance company refused to make payment. The Commissioner threatened to revoke the insurance company's license. The insurance company paid the tax under protest and then brought an action to recover the amount paid. The insurance company claimed that the Act was a revenue bill that unconstitutionally originated in the State Senate rather than in the State House of Representatives as required. The trial court sustained the Commissioner's general demurrer. On appeal, the court affirmed. The court held that the primary object and purpose of the Act was to regulate insurance companies and the insurance

business in the State. It was a regulation or supervision tax, and the method of arriving at the amount, or because of its operation the Act produced an excess that was required to be turned into the general fund, did not affect its validity or render it an act for revenue.

### Outcome

The court affirmed the judgment of the trial court.

### LexisNexis® Headnotes

Insurance Law > Industry Practices > Insurance Company Operations > Taxes on Premiums

Insurance Law > Industry Practices > Insurance Company Operations > General Overview

#### [HN1](#) Insurance Company Operations, Taxes on Premiums

The Act of 1907 (Colorado) repeals all prior acts, reorganizes and reestablishes the Colorado Department of Insurance with a Commissioner of Insurance at its head. It is a comprehensive code of insurance laws intended to protect the people and regulate the insurance business and insurance companies doing business within the State. It requires the payment of enumerated fees and a two percent tax annually on gross premiums.

Insurance Law > Industry Practices > Insurance Company Operations > General Overview

Tax Law > ... > Personal Property  
Taxes > Exemptions > General Overview

## [HN2](#) Industry Practices, Insurance Company Operations

Insurance companies must pay taxes on all their property.

Constitutional Law > Congressional Duties & Powers > Raising Revenue

Governments > State & Territorial  
Governments > Finance

## [HN3](#) Congressional Duties & Powers, Raising Revenue

A bill designed to accomplish some well defined purpose other than raising revenue is not a revenue measure. Merely because, as an incident to its main purpose, it may contain provisions, the enforcement of which produces a revenue, does not make it a revenue measure.

Constitutional Law > Congressional Duties & Powers > Raising Revenue

Governments > State & Territorial  
Governments > Finance

## [HN4](#) Congressional Duties & Powers, Raising Revenue

Revenue bills are those that have for their object the levying of taxes in the strict sense of the words. If the principal object is another purpose, the incidental production of revenue growing out of the enforcement of the act will not make it a bill for raising revenue.

Insurance Law > Industry Practices > Insurance Company Operations > General Overview

Insurance Law > Industry Practices > General Overview

## [HN5](#) Industry Practices, Insurance Company Operations

The primary object and purpose of the Act of 1907 (Colorado) is to regulate insurance companies and the insurance business in the State. It is a regulation or

supervision tax, and the method of arriving at the amount, or because of its operation the Act produces an excess that is required to be turned into the general fund, does not affect its validity or render it an act for revenue.

Governments > Legislation > Interpretation

## [HN6](#) Legislation, Interpretation

It is fundamental in the construction of legislative acts, if a statute contains an unconstitutional clause that was the inducement for its passage, and all its parts are so closely connected as to warrant the belief that the legislature would not have passed the valid part alone, then the law should be declared void.

Governments > Legislation > Interpretation

## [HN7](#) Legislation, Interpretation

In arriving at the legislative intent, it is proper that courts should consider the legislative history.

**Counsel:** Mr. CLARENCE A. BRANDENBURG, Nr. JACOB FILLIUS and Mr. WILLIAM E. HUTTON, for plaintiff in error.

Mr. BENJAMIN GRIFFITH, attorney general, and Mr. ARCHIBALD A. LEE, deputy attorney general, for defendant in error.

**Judges:** Before Mr. JUSTICE GARRIGUES. Mr. JUSTICE SCOTT not participating.

**Opinion by:** GARRIGUES

## Opinion

En Banc

**[\*257] [\*\*331]** Mr. JUSTICE GARRIGUES delivered the opinion of the court:

1. December, 1909, plaintiff filed a complaint in the district court at Denver, alleging its incorporation under the laws of Colorado; that the legislature in 1907 passed an act regulating insurance companies within the state, and that defendant is the commissioner of insurance provided by the act; that section 16 of the act provides:

'All insurance companies engaged in the transaction of the business of insurance in this state, shall annually, on or before the first day of March, in each year, pay to the commissioner of insurance, two per cent. on the gross amount of premiums received within this state during the year ending the previous 31st day of December. Insurance companies [\*\*\*2] shall not be subject to any further taxation except on real estate, and the fees provided by this act'; that section 74 repeals all laws relating to insurance in force prior thereto; that section 16 is a revenue measure and unconstitutional, because it originated in the senate, instead of the house; also that it violates sections 6, 9 and 10, article X, of the constitution; that prior to March 1st, 1909, plaintiff was enjoying in this, and other states, a large and profitable life insurance business; that its right to continue in business in this state depended upon its securing annually on the 1st of March, a license from the commissioner of insurance, and its right to transact business in other states depends upon its right to continue in business in this state; that the insurance act provides: Should the commissioner of insurance refuse to renew plaintiff's license, it becomes his duty to publish the fact in one or more of the Denver daily papers, and prohibits plaintiff from transacting any insurance business in this state until its authority shall have been restored by the commissioner; that its success depends on securing new business, and a failure to obtain a license upon [\*\*\*3] the 1st of March, would have destroyed its business in Colorado, and would have caused the revocation of its license to do business [\*258] in other states, because it is prohibited from transacting business without a license. Notwithstanding which, defendant, as commissioner of insurance, on March 1st, 1909, refused to renew the petitioner's license, or to issue to it a license unless it paid to him as commissioner of insurance, a two per cent. tax on the gross amount of premiums it received within the state during the year ending the previous 31st day of December, and threatened in that event to publish that plaintiff's license had not been renewed, and that it could no longer transact business within the state, and alleged should it attempt to do so, that its officers and agents would be liable to fine and imprisonment; that to prevent the destruction of its business, and to secure the required license, plaintiff then and there, under duress and under protest, and claiming and insisting that section 16 was unconstitutional and void, and that defendant as commissioner of insurance had no right to insist upon payment to him of the two per cent. tax, paid defendant as commissione [\*\*\*4] of insurance, the sum of \$3,842.48, which was two per cent. of the gross amount

of premiums received within the state during the year ending the previous 31st day of December, and thereupon defendant issued to plaintiff a license; that when the license was refused, plaintiff had complied with all the remaining insurance laws of Colorado; that defendant refused to return the money, though requested so to do; and it prays judgment for \$3,842.48, with eight per cent. interest from March 1st, 1909, and costs.

December 13, 1910, the court sustained a general demurrer to the complaint, and plaintiff electing to abide by its complaint, entered judgment for defendant and plaintiff brings the case here upon error.

2. The legislature passed insurance acts in 1883, 1895 and 1907, all of which required the payment of certain enumerated fees and a two per cent. tax on premiums. The act of 1883 required the payment of enumerated fees, a two per cent. tax annually on net premiums, and exempted insurance [\*259] companies from further taxation except upon real estate. The act of 1895 required the fees, the payment of a two per cent. tax annually [\*\*332] upon gross premiums received during [\*\*\*5] the year; but made no exemptions. The act of 1907 [HN1](#)<sup>↑</sup> repeals all prior acts, reorganizes and re-establishes the department of insurance with a commissioner of insurance at its head, and is a comprehensive code of insurance laws intended to protect the people and regulate the insurance business and insurance companies doing business within the state. It requires the payment of enumerated fees, a two per cent. tax annually on gross premiums, and exempts them from further taxation except on real estate.

3. This exempting clause in section 16 was held unconstitutional in [Imperial Co. v. Denver, 51 Colo. 456](#); that is, it was there held that [HN2](#)<sup>↑</sup> insurance companies must pay taxes on all their property, and that the exemption was illegal on account of constitutional restrictions, and it is claimed this makes the two per cent. tax illegal because the exemption was the consideration or inducement for its passage.

4. Plaintiff contends the tax is a revenue measure, and unconstitutional because the act originated in the senate instead of the house. This contention does not meet with our approval. [HN3](#)<sup>↑</sup> A bill designed to accomplish some well defined purpose other than raising revenue, is not [\*\*\*6] a revenue measure. Merely because, as an incident to its main purpose, it may contain provisions, the enforcement of which

produces a revenue, does not make it a revenue measure. [HN4](#) Revenue bills are those which have for their object the levying of taxes in the strict sense of the words. If the principal object is another purpose, the incidental production of revenue growing out of the enforcement of the act will not make it a bill for raising revenue. [HN5](#) The primary object and purpose of this bill was to regulate insurance companies, and the insurance business in the state. It is a regulation or supervision tax, and the method of arriving at the amount, or because of its operation the act produces an excess which is required to be turned into **[\*260]** the general fund, does not affect its validity or render it an act for revenue. -- 26 Am. & Eng. Enc. of Law, 539; I Story on the Constitution (5th Ed.), sec. 880; I Andrews' Am. Law, 241; [Twin City Nat. Bank v. Nebeker, 167 U.S. 196](#); [Northern Counties Trust v. Sears, 30 Ore. 388](#); [French v. People, 6 Colo. App. 311](#); [Home Ins. Co. v. N.Y., 134 U.S. 594](#).

5. The remaining question is, what effect does the exemption **[\*\*\*7]** clause in the section have upon the two per cent. tax; does it destroy the tax or does the remainder of the section stand without the exemption? Will the intent of the legislature be defeated by holding the exemption invalid, and the two per cent. tax valid? [HN6](#) It is fundamental in the construction of legislative acts, if a statute contains an unconstitutional clause which was the inducement for its passage, and all its parts are so closely connected as to warrant the belief that the legislature would not have passed the valid part alone, then the law should be declared void. The power of the legislature to impose the two per cent. tax may well be conceded; but in determining its legality, we should try to ascertain the object and intent of the legislature, and, if we find the two per cent. tax on premiums is so dependent upon and closely connected with the exempting clause that the former would not have been passed without the latter, then it is illegal.

It is claimed by plaintiff, the intention in imposing on insurance companies the two per cent. tax on premiums was contingent upon their being exempt from the payment of other taxes except on real estate, and as the contingency **[\*\*\*8]** is unconstitutional, the tax does not express the legislative intent; that the exemption was the inducement for imposing the tax, and the legislature would not have passed one without the other. If it is true the exemption was the inducement for imposing the tax on premiums, and the two clauses are so intimately connected as to make it clear that the tax on premiums would not have been imposed without the exemption then both should be declared illegal.

**[\*261]** We have attempted to show that the object of the legislature was to regulate insurance companies and insurance business in the state, and the intent was to create a fund for this purpose and for the maintenance of the insurance department. We have also said, because it produces an excess, which is required to be transferred into the general fund, does not make it a revenue measure or change the primary purpose of the legislature.

[HN7](#) In arriving at the legislative intent, it is proper that we should consider the legislative history of this two per cent. tax. Insurance companies have been required since 1883, to pay a regulation tax of two per cent., sometimes with, and sometimes without exemptions; sometimes on gross, **[\*\*\*9]** and sometimes on net premiums; but they have always been required to pay it in some form. This shows that it has always been the legislative intent since 1883, to require them to pay a regulation tax. The exemption has nothing to do with the necessity for requiring this tax, and we are not at liberty to presume it would not have been imposed without the exemption. We have no right under the circumstances and history of this tax to say, that because the exemption is unconstitutional, the tax would not have been imposed. The purposes for which it is needed are just as necessary, and just as pressing with or without the exemption. The exemption does not change the necessity for, or the object of the tax, or the intent **[\*\*333]** of the legislature in requiring it. So it is not apparent that the exemption was the inducement which caused the legislature to impose it. The tax and the exemption are not so closely related or connected that the tax cannot stand and the exemption fall without doing violence to the legislative intent. Because the exemption is illegal does not change the general object and purpose of the legislature requiring insurance companies to pay a regulation tax. **[\*\*\*10]** If the legislature had made no exemption, and carried out its object, it is evident it would have required a regulation tax. We believe the tax can stand without the unconstitutional part and that when **[\*262]** the invalid exemption is expunged, the act is still operative and that the legislative intent can be carried into effect without the exemption.

If the section stood alone, as a primary and independent revenue measure, there would be force in the contention that the enactment of the two per cent. tax was intended to be contingent upon insurance companies being exempt from the further payment of taxes. But as we have said, the two per cent. tax is primarily for the purpose of raising necessary funds for

carrying the insurance act into effect, and would have been just as necessary without exemption. -- [State of Iowa v. Santee, 111 Ia. 1](#); [N.W. Mut. Ins. Co. v. Lewis & Clark Co. 28 Mont. 484](#).

The judgment is affirmed.

*Affirmed.*

Mr. JUSTICE SCOTT not participating.

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