OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

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INSURANCE:
Applicability of the Fire
Marshal Tax to Premiums
Received by Casualty
Insurance Companies

Mr. Thomas L. Armstead
State Fire Marshal
1035 Stevenson Drive
Springfield, Illinois 62703-4259

Dear Mr. Armstead:

I have your letter wherein you inquire whether a casualty insurance company which is classified as both a Class 2 and a Class 3 insurance business is subject to the tax prescribed in section 12 of the Fire Investigation Act (425 ILCS 25/12 (West 1996)), commonly referred to as the "fire marshal tax", for that portion of an insurance premium attributable to one of the hazards specified in section 12 of the Act, regardless of whether the insurance policy is written pursuant to the company's Class 2 or Class 3 authority. For the reasons hereinafter stated, it is my opinion that the fire marshal tax is applicable in these

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circumstances whether the insurance policy is written as a Class 2 policy or a Class 3 policy.

I note, initially, that the Illinois Insurance Code (215 ILCS 5/1 et seq. (West 1996)) classifies all insurance businesses operating in the State into three distinct classes. (215 ILCS 5/4 (West 1996).) Class 1 insurance businesses are authorized to sell various types of life, accident and health insurance, and are not at issue in your inquiry. (215 ILCS 5/4 (West 1996).) Casualty companies are classified as Class 2 insurance businesses and are authorized to insure, inter alia, against specified accident, health, workers' compensation, burglary and forgery losses or damages. (215 ILCS 5/4 (West 1996).) Class 3 insurance businesses are authorized to insure, inter alia, against loss or damage by fire, natural elements, war, riot and explosion. (215 ILCS 5/4 (West 1996).)

You have directed my attention to an unpublished opinion dated September 3, 1957, wherein Attorney General Castle was asked to determine whether motor vehicle fire risk premium receipts received by insurance companies which were originally chartered in this State as casualty companies, but which later became authorized to write Class 3 insurance policies, were subject to the fire marshal tax. Attorney General Castle reviewed the language of section 12 of "AN ACT in relation to the investigation and prevention of fires and dangerous conditions in and near buildings and other structures" (Ill. Rev. Stat. 1955,

ch. 127½, par. 16) (the precursor of section 12 of the Fire Investigation Act) which provided, in pertinent part:

> "For the purpose of maintaining the Division of Fire Prevention of the Department of Public Safety and paying the expenses incident thereto, every fire insurance company, whether upon the stock or mutual plan, and all individuals, firms, corporations, associations or aggregations of underwriters doing business in the State of Illinois, shall pay to the Department of Insurance of the State of Illinois in the month of March annually, in addition to the taxes now required by law to be paid by such companies, associations, partnerships, firms or individuals, not exceeding one-half of one per cent of the gross fire, sprinkler leakage, riot, civil commotion, explosion and motor vehicle fire risk premium receipts of all such companies, firms, individuals, associations or partnerships on all business done in the State of Illinois during the year preceding or such portion of the year as this law may have been in effect as shown by their annual statement under oath to the Department of Insurance, * * *
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> * * * "

(Emphasis added.)

Under the language quoted above, Attorney General Castle stated that "[t]he tax is not imposed on a casualty company but upon a fire insurance company, and then only upon specific premium receipts of the fire insurance company." He then concluded that a casualty company, which was also qualified to write Class 3 insurance coverage, would be liable for the fire marshal tax only if the company wrote a motor vehicle fire risk policy under its Class 3 authority. The casualty company would

not be liable for the tax for a policy written pursuant to its Class 2 authority.

Subsequent to the issuance of Attorney General Castle's opinion, the General Assembly amended section 12 of "AN ACT in relation to the investigation and prevention of fires and dangerous conditions in and near buildings and other structures" (see Public Act 85-718, effective January 1, 1988) and recodified it as section 12 of the Fire Investigation Act. Section 12 currently provides, in pertinent part:

> "Every fire insurance company, whether upon the stock or mutual plan, and every personal or business entity doing any form of fire insurance business in the State of Illinois, shall pay to the Department of Insurance in the month of March, such amount as may be assessed by the Department of Insurance, which may not exceed 1% of the gross fire, sprinkler leakage, riot, civil commotion, explosion and motor vehicle fire risk premium receipts of such company or other entity from such business done in the State of Illinois during the preceding year, and shall make an annual report or statement under oath to the Department specifying the amount of such premiums received during the preceding year. * * *" (Emphasis added.)

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. (People v. Woodard (1997), 175 Ill. 2d 435, 443.) Legislative intent is best evidenced by the language used in the statute. (Marketview Motors, Inc. v. Colonial Insurance Co. (1997), 175 Ill. 2d 460, 464.) Where statutory language is clear and unambiguous, it must be given effect as written. (Barnett v. Zion

Park Dist. (1996), 171 Ill. 2d 378, 389.) Moreover, when the General Assembly enacts an amendment, it is generally presumed that a change in existing law was intended. Hession v. Illinois Dept. of Public Aid (1989), 129 Ill. 2d 535, 543.

Under the language of section 12 of the Fire Investigation Act, it is clear that fire insurance companies continue to be subject to the fire marshal tax. By its amendment, however, the General Assembly has apparently extended the liability for the fire marshal tax to include all business entities "* * * doing any form of fire insurance business." (Emphasis added.) The phrase "fire insurance business" is not defined in the Fire Investigation Act. It is well established, however, that undefined statutory terms must be given their ordinary and popularly-understood meaning. (People v. Bailey (1995), 167 Ill. 2d 210, 229.) The term "fire insurance business" generally refers to a business which insures against loss or damage by fire.

Casualty companies are expressly authorized to insure, inter alia, "* * * against any loss or liability resulting from or incident to the ownership, maintenance or use of any vehicle (motor or otherwise) * * *." (215 ILCS 5/4 (West 1996).) If a casualty company issues a motor vehicle fire risk policy pursuant to its Class 2 grant of authority, for example, the casualty company would be insuring against a loss or damage by fire and would be engaged in the "fire insurance business", as that term is commonly understood. Consequently, it is my opinion that a

casualty company which is authorized to engage in both Class 2 and Class 3 insurance business is subject to the fire marshal tax on that portion of its premiums attributable to the hazards specified in section 12 of the Fire Investigation Act, regardless of whether the particular policy in question was written pursuant to the casualty company's Class 2 or Class 3 authority.

Sincerely,

JAMES E. RYAN
Attorney General