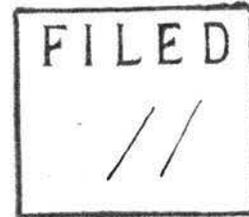


INCORPORATION TAX to be paid on basis of assets and not amount of capital stock, where assets greatly exceed capital stock.

4598 RS  
June 21st, 1933



Hon. Dwight H. Brown,  
Secretary of State,  
Jefferson City, Missouri.

In re: Cairo Bridge & Terminal Co.

Dear Sir:

We have your request for an opinion from this Department as to the proper method of determining the incorporation fees, of a foreign corporation desiring to qualify as such under the laws of Missouri, and particularly whether or not the fees shall be based upon that portion of the Capital Stock as represented by the company in Missouri, or upon the actual value of its property as located in Missouri.

We understand that the above corporation is a Delaware corporation, with a Capital Stock of \$109,425, and contains no no-par value shares. We also understand that the property owned by this corporation is valued at \$2,600,000, and that half of this property is located in the State of Missouri. This corporation desires to qualify as a foreign corporation in the State of Missouri upon the payment of fees upon one-half of its Capital Stock, namely \$54,712. In this connection we quote from the affidavit of principal agent or officer in the State of Missouri, Roland S. Baker, which affidavit was made on June 16th, 1933, and is as follows:

"That the amount of authorized Capital Stock of said corporation is \$109,425 par value stock and no shares of no par value; that the property located and business transacted in all states where license to do business is \$2,600,000, and property located and business transacted in Missouri will not be more than \$1,300,000, and that portion of the authorized Capital Stock of such corporation which is represented by its property located and business transacted in the State of Missouri will not be more than \$54,712."

Section 4598 R. S. 1929 provides that a foreign corporation, incorporated for the purpose of gain under the laws of another State before being authorized to do business in the State of Missouri,

"\* \* \* shall be required to pay into the state treasury upon the proportion of its authorized capital stock represented by its property and business in Missouri, incorporating tax and

June 21st, 1933

fees equal to those required of similar corporations formed within and under the laws of this State, \* \* \*

Under this statute foreign corporations, insofar as the amount of fees required of them prior to incorporating, stand upon the same footing as domestic corporations.

It is the opinion of this Office that these fees required to be paid to the Secretary of State, constitute a tax, and that no corporation has the authority to arbitrarily fix its capital stock at a figure far below the value of its actual assets in Missouri for the purpose of escaping and avoiding this tax. In *State ex rel. v. Roach*, 266 Mo. 435, decided in 1915, the Supreme Court en banc, by four to three decision decided that a corporation with capital stock fixed at \$50,000, and assets at \$91,000, must pay the incorporation fees upon the actual value of the assets, namely \$91,000, and not upon the amount of capital stock fixed at \$50,000. In line with this decision it is therefore the opinion of this Office that the incorporators here must pay to the Secretary of State incorporation fees upon the value of \$1,300,000 assets in the State of Missouri.

Yours very truly,

FRANKLIN E. REAGAN  
Assistant Attorney-General

APPROVED:

ROY McKITTRICK  
Attorney-General

FER/mh

6-29  
June 29th, 1933

Hon. Dwight H. Brown,  
Secretary of State,  
Jefferson City, Mo.

In re: Cairo Bridge & Terminal Co.

Dear Sir:

At your request, we are supplementing our opinion of June 21st, 1933 with reference to the above matter by adding thereto, that in determining the value of the assets of a corporation for the purpose of fixing the tax, the existence of any liens on said property shall not be deducted from the value of the property itself in determining the tax to be paid upon the value of the property.

Yours very truly,

FRANKLIN E. REAGAN,  
Assistant Attorney-General

APPROVED:

---

ROY McKITTRICK  
Attorney-General

FER/mh