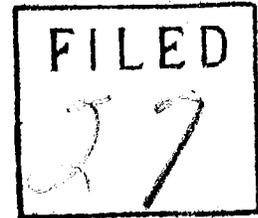


TAXATION AND REVENUE: Liability of corporation to file annual statement with State Tax Commission.

July 23, 1946



Hon. Clarence Evans, Chairman
State Tax Commission of Missouri
Jefferson City, Missouri

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Dear Sir:

Reference is made to your letter of recent date, requesting an official opinion of this office, and reading as follows:

"Will you please give us an official opinion in the following matter relative to Corporation Franchise Tax?"

"The Commercial Gandy Company, on 561 Grand Avenue, Kansas City, Missouri, organized under the laws of the State of Missouri has filed their Corporation Franchise Tax Report for 1946 with the Commission and claim that under Section 144, Laws of Missouri, 1943, they are not required to furnish us with a balance sheet showing amount of their assets.

"They claim that under Section 144, Laws of Missouri, 1943, they are only required to pay the franchise tax on their capital and surplus as shown by their report."

Section 144, referred to in your letter, appears in an Act found in Laws of Missouri, 1943, pages 410 to 491, inclusive, and reads as follows:

"All insurance companies, building and loan associations, and other corporations, the fees of which are fixed at lump sums by this Act, and all corporations which employ all their property and all their outstanding shares in this state, or which will report and pay the fees on all of its outstanding shares, whether

employed in this state or not, shall not be required to set out in the report required by this Act the value of its property within this state or without the state."

The report referred to in the above quoted section is required under the provisions of Section 136 of the same Act, which, as amended by House Bill No. 540 of the 63rd General Assembly, reads as follows:

"Every corporation liable to the tax prescribed in the foregoing section shall make a report in writing to the State Tax Commission annually on or before the first day of March in such form as said Commission may prescribe. Such report shall be signed and sworn to before an officer duly authorized to administer oaths by the president, vice-president, secretary, treasurer or general manager of the corporation and shall contain the following:

- "1. Name of corporation.
- "2. The location of its registered office in this State.
- "3. The names of its president, vice-president, secretary, treasurer, and members of the board of directors, with the residence and post office address of each.
- "4. The amount of authorized shares.
- "5. The amount of shares subscribed.
- "6. The amount of shares issued and outstanding.
- "7. The amount of shares paid up.
- "8. The par value of the shares with par value.
- "9. The market value of the shares.
- "10. The amount of surplus and undivided profits on the 31st day of the preceding December, or on the last day of the preceding fiscal year of said corporation.
- "11. The nature and kind of business in which the corporation is engaged and the location of its place or places of business.
- "12. The market value of its property and assets in this state.

- "13. The market value of its property and assets without this state.
- "14. The market value of its total property and assets.
- "15. The amount of liabilities.
- "16. The change or changes, if any, in the above particulars made since the last annual report."

Upon reading Section 144, supra, carefully, it becomes apparent that three types of corporations are relieved from reporting the value of their property within this state or without this state. The three classifications so provided are as follows:

- (1) Corporations which pay a lump sum in lieu of the corporation franchise tax, computed upon the basis of one-twentieth of one per cent of the par value of their outstanding shares and surplus.
- (2) Corporations which employ all their property and all their outstanding shares in this state.
- (3) Corporations which will return for corporation tax computation all of their outstanding shares, without regard to whether or not they are employed wholly within this state.

You will note that such corporations are only relieved from setting out in their report the division of the value of their property as between its location within this state or without this state. They are in no event relieved from setting out in the report, under Items 14 and 15 of Section 136, quoted supra, the market value of their total property and assets and the amount of their liabilities. The reason for the retention of the requirement that the report, in any event, set forth the information required by Items 14 and 15 appears when the provisions of Section 135, found in Laws of Missouri, 1943, page 475, are considered.

From the name of the corporation with which your request deals, we take it that such corporation is not one of those included within group (1) above. It, therefore, necessarily falls within either group (2) or group (3), dependent upon

whether it employs all of its property and outstanding shares in this state or has elected to pay the tax computed upon all of its outstanding shares, whether employed in this state or not. In either event, the tax will be computed under the provisions of Section 135, mentioned supra, which reads, in part, as follows:

" * * * every corporation of this state
* * * shall * * * pay an annual franchise
tax to the State of Missouri equal to one-
twentieth or one per cent of the par value
of its outstanding shares and surplus, or
if the outstanding shares of such corpora-
tion or any part thereof consist of shares
without par value, then, in that event, for
the purpose herein contained such shares
shall be considered as having a value of
\$5.00 per share unless the actual value of
such shares should exceed \$5.00 per share,
in which case the tax shall be levied and
collected on the actual value and the sur-
plus. * * * "

We think the underscored portion of the section quoted offers the reason for the retention of the requirement that the corporation report the clear market value of its total property and assets and the amount of its liabilities. Without this information, it would be impossible for the State Tax Commission to compute the annual franchise tax due by the corporation, as no basis would exist for the determination of whether or not the value of its shares was lesser or greater than \$5.00 per share.

CONCLUSION

In the premises, we are of the opinion that a corporation must set forth in its report to the State Tax Commission for the purpose of computing the annual franchise tax of such corporation, the information required under section 136 of House Bill No. 540 of the 63rd General Assembly, with the exception of the items designated in such section as Nos. 12 and 13, even though such corporation be within the purview of

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Section 144 of an act found in Laws of Missouri, 1943, pages 410 to 491, inclusive, either by act of law or by the election of such corporation.

Respectfully submitted,

WILL F. BERRY, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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