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CORPORATION FRANCHISE TAX: Foreign corporation not required to pay Missouri corporation franchise tax in year of commencing business in the state.

March 10, 1948



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Honorable Clarence Evans, Chairman
State Tax Commission of Missouri
Jefferson City, Missouri

Dear Sir:

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

"On December 30, 1947, consumation of re-organization of the Chicago, Rock Island, & Pacific Railway Company was ordered by Federal District Judge Igoe, at Chicago. The order provided authorization for the manager and re-organized company to proceed with consumation of plan and for transfer of properties of debtor to re-organized company on January 1, 1948.

"The old company was the Chicago, Rock Island & Pacific Railway Company and their license to do business in Missouri is still in effect. The new company, the Chicago, Rock Island & Pacific Railroad Company, was organized under the Laws of Delaware, December 16, 1947, and on January 2, 1948, wired the Secretary of State's Office asking to file application to do business in Missouri.

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"From the information we have the court order was dated December 30, 1947, and the date of delivery was January 1, 1948. Consequently, it would appear that the old company did no business in Missouri on January 1, and the new company was not licensed to do business until January 2. However, somebody operated this property in Missouri on January 1, 1948.

"The same property is involved regardless of the company and we would appreciate an opinion from you as to who is liable for the 1948 Corporation Franchise Tax."

From the facts stated, it is clear that the new corporation did not commence business in Missouri until January 1, 1948.

Two statutes appear relating to the imposition of franchise taxes upon foreign corporations. One, Section 4997.135, Mo. R.S.A., forms a part of "The General and Business Corporation Act of Missouri," found Laws of 1943, page 410. This act was approved August 6, 1943, becoming effective upon the adjournment of the General Assembly, in accordance with the provisions of Article IV, Section 36, Constitution of 1875, and Section 659, R. S. Mo. 1939.

The other statute relating to the taxation of corporate franchises is found as Section 5113, R. S. Mo. 1939, as amended, Laws of 1943, page 406. Peculiarly enough, the latter statute was repealed by "The General and Business Corporation Act of Missouri," referred to above, but, in spite of such repeal, the statute was amended and reenacted by the same General Assembly. It was approved July 15, 1943, becoming effective upon the adjournment of the General Assembly, in accordance with the constitutional and statutory provisions, mentioned supra. It, therefore, appears that both acts became effective upon the same date.

No substantial differences appear in the two acts, material to the matter here being considered, except the following proviso contained in Section 5113, as found Laws of 1943, page 406:

" * * * Provided, that no tax shall be imposed on corporations organized under the laws of this state on or after January 1, in any year, or on foreign corporations that commence business in this state on or after January 1, in any year, for the year in which said domestic corporations were organized, or the year in which said foreign corporations commenced business in this state: * * * "

We have here, then, a situation in which the General Assembly, at the same session, passed two laws relating to the same subject matter, effective upon the same date, one of which laws contained a grant of exemption, and the other of which did not.

It is our thought that such grant of exemption represents a special law in so far as it relates to corporations organized under the laws of the state or commencing business within the state in the first year of their operation. Therefore, in accordance with the ordinary rule of construction that, in such circumstances, the special law is presumed to represent the intent of the General Assembly and to prevail over the general treatment of the same subject matter, we believe the exemption proviso to be applicable to the present case. Illustrative of this rule of statutory construction is *State ex rel. v. Brown*, 68 S. W. (2d) 55, l. c. 59, wherein the Supreme Court quoted approvingly the following language from *Tevis et al. v. Foley*, 30 S. W. (2d) 68:

" * * * In such case the rule applicable is that 'where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.' *Tevis et al. v. Foley*, 325 Mo. 1050, 1054, 30 S. W. (2d) 68, 69; *State ex rel. Buchanan County v. Fulks*, 296 Mo. 614, 626, 247 S. W. 129; *State ex inf. Barrett v. Imhoff*, 291 Mo. 603, 617, 238 S. W. 122. * * *"

That such construction properly reflects the legislative intent is borne out by two other matters which come readily to mind. For instance, the computation of the annual franchise tax, under the provisions of Section 4997.136, Mo. R. S. A., is based upon a report of the various corporations subject to franchise tax, reflecting the financial structure of each corporation as of the 31st day of the preceding December. Such information would, of course, not be available for a newly organized domestic corporation nor for a foreign corporation just commencing business in

Missouri. Again, newly formed domestic corporations and foreign corporations commencing business in the state are required to pay organization taxes, which closely approximate the annual franchise taxes due thereafter upon equivalent amounts of property and assets employed in Missouri. In other words, such organizational fees roughly amount to the taxes which would otherwise be due. The foregoing is persuasive, to our mind, to the view that the exemption proviso was intended to be applied.

Two other matters appear in your letter of inquiry which we shall dispose of.

We note that you state "it would appear that the old company did no business in Missouri on January 1." This presents a factual situation about which we can, of course, formulate no opinion. If it develops that in fact the old company did exercise corporate functions on January 1, then the old company will be subject to the annual franchise tax for the calendar year 1948. In this regard, see the official opinion of this office, directed to yourself, under date of June 4, 1946.

We note, too, the further statement in your inquiry that "the new company was not licensed to do business until January 2." This is not material to the determination of your major question, as under Section 4997.135, Mo. R. S. A., the franchise tax is imposed upon foreign corporations "engaged in business in this state whether under a certificate of authority issued under this Act or not." Of course, the engaging in business by a foreign corporation prior to having received the proper certificate of authority to do so from the Secretary of State would subject such foreign corporation to the penalties provided by "The General and Business Corporation Act of Missouri."

CONCLUSION

In the premises, we are of the opinion that a foreign corporation commencing business in Missouri on or after January 1 of any calendar year is not required to pay the annual Missouri corporation franchise tax for the calendar year in which such business is commenced.

Respectfully submitted,

APPROVED:

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