

FRANCHISE TAX:
TAXATION:
CORPORATIONS NOT
ORGANIZED FOR PROFIT:

FMSM Corporation is not a corporation not organized for profit within the meaning of Sec. 14.010, par. 3, RSMo 1959, and is liable for the payment of the annual franchise tax.

May 17, 1961



State Tax Commission of Missouri
Jefferson Building
Jefferson City, Missouri

ATTN: Mr. W. Arnold Brannock, Attorney

Gentlemen:

You have requested an opinion respecting the liability of FMSM Corporation to the Missouri franchise tax, as follows:

"The FMSM Corporation is a foreign corporation incorporated March 28, 1956, under the District of Columbia Business Corporation Act for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to certain qualified trusts, created by employers as part of stock bonus, pension or profit sharing plans for the exclusive benefit of employees and their beneficiaries. Said corporation has issued and there are outstanding one thousand shares of stock, all of which are held by the Chase Manhattan Bank through a nominee, as trustee of the Ford Retirement Trust, an approved trust under Section 401 of the Internal Revenue Code of 1954. All of the capital has been obtained from the trust.

"The corporation has acquired title to a number of automobile service stations which have been leased to Socony Mobile Oil Company, Inc. All of the income is turned over periodically to the trust. The corporation may have been ruled exempt from federal and Missouri income taxes, and claims that it is exempt from liability for payment of the Missouri franchise tax on the theory that it is a corporation not organized for profit. Under

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the foregoing facts submitted by the corporation we would like to know whether said corporation is exempt from liability for franchise tax as a corporation not organized for profit?"

Section 147.010, RSMo 1959, paragraph 2, provides that every foreign corporation engaged in business in this state shall pay an annual franchise tax. Paragraph 3 of Section 147.010 provides that "this law shall not apply to corporations not organized for profit." The question presented is whether the FMSM Corporation is exempt from liability for the payment of franchise tax on the theory that it is a corporation not organized for profit.

The facts stated in the request are that the corporation has invested funds in the acquisition of title to automobile service stations and that said service stations have been leased for the purpose of deriving income for the corporation. The corporation in turn pays the entire net income, less expenses, to the Ford Retirement Trust, presumably by declaring dividends on its capital stock all of which is held by the Chase Manhattan Bank, through a nominee, as trustee of the Ford Retirement Trust. The capital used for the business of the corporation has been obtained from the trust.

The fact that the corporation may be exempt from income tax liability is not in our view relevant in determining whether FMSM Corporation is a "corporation not organized for profit" within the meaning of Section 147.010, RSMo 1959. Income tax exemptions are determined under specific statutory provisions without regard to whether the corporation is in fact organized for profit.

With respect to exemption from federal income tax liability, Section 501 (c)(2) of the Internal Revenue Code of 1954 specifically exempts from federal income taxes "corporations organized for the exclusive purpose of holding title to property, collecting income therefrom and turning over the entire amount thereof, less expenses, to an organization which is itself exempt under this section." Thus, it is apparent that such exemption is not affected by whether or not the corporation "was organized for profit".

Missouri has a statutory provision somewhat similar to Section 501 (c)(2). Section 143.120, RSMo 1959, provides that "there shall not be taxed under this chapter any income received by any

(12) Corporation or association organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;"

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Here too, such exemption is in nowise related to whether or not the corporation was "organized for profit". A further provision relating to income tax liability is Section 143.040, RSMo 1959, which exempts "corporations whose only activity is the investment or reinvestment of its own funds in ...real estate, leaseholds... and other interest in real estate, or holding ... real estate... leaseholds...or any other interest in real estate."

The foregoing should make it rather obvious that the basis of exemption from income tax liability is entirely different than the basis of the exemption granted certain corporations from franchise tax liability. The nature of its holdings and the disposition of its income are not statutory factors in determining the liability of a corporation to the franchise tax, as distinguished from its liability to income tax. A corporation is exempt from franchise tax liability only if it is not "organized for profit".

Your request for an opinion states that the FMSM Corporation was organized under the District of Columbia Business Corporation Act. A study of that act makes it clear that only "corporations for profit" come within the scope thereof. In Section 29-903 of the District of Columbia Business Corporation Act, it is provided "corporations for profit may be organized under this chapter for any lawful purpose or purposes except for the purpose of banking or insurance or the acceptance or execution of trusts, the operation of railroads, or building and loan associations."

Other provisions of the Act emphasize the fact that such Act pertains only to corporations for profit. Section 29-952 of the Act contains the following provision relating to reincorporation:

"Any corporation which is organized and existing under the laws of the District of Columbia on December 5, 1954, and which is organized for profit and for a purpose or purposes authorized by this chapter may avail itself of the provisions of this chapter and may become reincorporated hereunder in the following manner . . ."

Section 29-952 also contains the following provision relating to incorporation:

"Any corporation which is created under the provisions of a special Act of Congress to transact business in the District of Columbia for profit and for purposes authorized by this chapter may avail itself of the provisions of this chapter and may become incorporated hereunder in the following manner . . ."

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FMSM Corporation is therefore by virtue of its organization under the District of Columbia Business Corporation Act a corporation admittedly "organized for profit". Moreover, this corporation is actually engaged in business in Missouri and under the facts stated in your request is in fact organized for profit. The word "profit" usually signifies gain realized from business and investments over and above expenditures. See *Sidney Smith Inc. v. Steinberg*, Mo. App., 316 SW 2d 243 which quotes definitions of "Profit" from 34 Words and Phrases, and also from Webster's New International Dictionary, 2d Ed., unabridged, "Profit". Webster's definition as quoted in that case is "The excess of returns over expenditure in a given transaction or a series of transactions."

There can be no reasonable doubt under the stated facts that the FMSM Corporation was organized in order to conduct a business for the purpose of realizing profit. The fact that such profit is ultimately paid over to a worthy beneficiary, if so, does not alter the fact that the activities of the corporation are those of a business corporation and that it was organized for the purpose of deriving as much income and profit as possible from its business operations. The corporation operates its business essentially the same as all other corporations of a similar nature organized for profit, and as such, it competes with other similar organizations.

CONCLUSION

It is our opinion that FMSM Corporation is not a corporation which is "not organized for profit" within the meaning of paragraph (3), Section 147.010, RSMo 1959, and that such corporation is liable for the payment of annual franchise tax.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Joseph Nessenfeld.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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