TAXATION: An annual franchise tax is required to be paid
              by every corporation organized and existing
              under the laws of this state in each year.

March 21, 1938

3-25 [FILED 62]

State Tax Commission
of Missouri
Jefferson City, Missouri

                Attention: Jesse A. Mitchell

Dear Sir:

            This will acknowledge receipt of your re-
quest for an opinion, reading as follows:

                "Is a corporation incorporated
                December 23, 1937, to which
                certificate of authority to do
                business was granted December
                30, 1937, but did not actually
                commence business until January
                3, liable for corporation fran-
                chise tax for the year 1938?"

            Your attention is directed to Section 4641
of R. S. Mo. 1929 reading, in part, as follows:

                "For the taxable year of 1929
                and thereafter every corporation
                organized under the laws of this
                state shall, in addition to all
                other fees and taxes now requir-
                ed or paid, pay an annual fran-
                chise tax to the State of Missouri."

            Obviously from the above quoted portion of
the statute, it is clear that every corporation or-
ganized under the Laws of this state is required to
pay an annual franchise tax.

            It is, further, provided, under the pro-
visions of Section 4643 of R. S. Mo. 1929, in part,
that:

"The taxes provided for in this
article shall be paid on or be-
fore the 15th day of May in each
year and shall be due and pay-
able to the state treasurer with-
out notice, who shall make out
and deliver a receipt therefor,
which shall recite that the
corporation named therein has
paid its annual franchise tax
under the provisions of this
article for the year ending 31st
day of the following December."

It will be noticed that when the taxes pro-
vided for have been paid that the receipt made out for
such taxes shall recite that the corporation, paying
the tax, has paid its annual franchise tax for the year
ending the 31st day of the following December. The
amount of taxes to be paid annually, by every corpora-
tion, is determined by the amount of their outstanding
capital stock and surplus as of December 31st of each
year. This date is but the "yardstick" for determin-
ing the amount of tax. Section 4642 of R. S. Mo. 1929.

If a corporation is organized and existing
under the Laws of this state, it is required to file
a report, as provided for in Section 4642, supra, on
or before the 1st day of March of each year. There-
after, on the 20th day of March of each year, it is the
duty of the State Tax Commission to assess the amount
of franchise tax based upon the report filed. Section
4643, supra.

From these statutory considerations, which
we believe to be plain, it indubitably follows that the
franchise tax imposed upon all corporations organized
under the Laws of this state, is an annual tax which
must be paid every year that the corporation is in
existence and the tax which any corporation is to pay
is based upon the amount of its outstanding capital
stock and surplus. The Supreme Court in the case of
State ex rel. vs. State Tax Commission, 282 Mo, 213 l. c.
220, made this observation:

"The reference to the amount of the
authorized capital stock and to the
amount of the surplus are made, solely,
for the purpose of pointing out a

method of determining the amount
of the tax."

Thus, it follows that, a corporation which
had its certificate of authority to do business as of
December 30, 1937 would be required to pay an annual
tax for the year 1938 and, as before pointed out, un-
der the provisions of Section 4641, 4642 and 4643,
supra, we necessarily assume from your request for
an opinion that the corporation, about which you in-
quire, had a capital stock as of December 31, 1937
and the tax should be measured on this basis as of
that date.

CONCLUSION

In view of the above, it is our opinion that
a corporation, incorporated December 23, 1937, which
corporation did not actually commence business until
January 3, 1938, is liable for the payment of a corpora-
tion franchise tax for the year 1938, as provided for
by Section 4641 R. S. Mo. 1929.

Respectfully submitted,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

(Acting) Attorney General

RCS:LB