

NON-PROFIT CO-OPERATIVE CORPORATIONS:

Such corporations are not required by law to file annual corporation franchise tax report.

May 4, 1945

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State Tax Commission
of Missouri
Jefferson City, Missouri

Attention: Honorable Jesse A. Mitchell,
Chairman

Gentlemen:

This will acknowledge your letter of April 21, 1945, to General Taylor. The matter of preparing the opinion requested in your letter, has been assigned to the writer.

Your letter States:

"Will you kindly furnish the State Tax Commission your opinion on the following question:

"Is a co-operative, not organized for profit, required to file an annual corporation franchise tax report?"

Article 23, Chapter 102, R.S. Mo. 1939, covers the procedure respecting the creation of non-profit, co-operative associations, and their procedure, powers and standing, after having organized as corporate bodies.

The many sections of said Article and Chapter are too lengthy and treat of too great a variety of matters of procedure to quote in this opinion, but it will be observed by reading said Article and Chapter, that it constitutes a complete scheme of creation and existence for such non-profit, co-operative corporations. This Article and Chapter seems to permit such non-profit, co-operative associations, as corporations, to engage in almost any

enterprise they would desire to operate within the proviso of the non-profit, co-operative Marketing Act, in as much as such associations or corporations are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.

Section 5113, Laws of 1943, pages 407, 408, was an amendment of Section 5113 of Article 1, Chapter 33, R. S. Mo. 1939. This amended statute so far as exempting non-profit, co-operative corporations from paying an annual franchise tax, was identical with the old Section 5113, as it stood as a part of said Article 1, Chapter 33, R. S. Mo. 1939, in that both sections had a proviso as follows:

"Provided, that this law shall not apply to corporations not organized for profit, * * * "

(See: second proviso in Section 5113, Article 1, Chapter 33, R. S. Mo. 1939, and see, first proviso of Section 5113, Laws of 1943, page 408.)

Thus it will be seen that both the original Section 5113, and the amended Section 5113, exempted non-profit, co-operative associations from paying an annual franchise tax.

Section 5114, R. S. Mo. 1939, was not amended in the Laws of 1943, as was said Section 5113. Section 5114 provided that:

"Every corporation liable to the tax prescribed in the foregoing section shall make a report in writing to the Missouri tax commission, if it is in existence, and if not, then to the state board of equalization annually on or before the first day of March in such form as said commission or said board of equalization may prescribe. * * * "

Said Section 5114, exempted such non-profit, co-operative

corporations from making the annual report to the State Tax Commission, by providing that only those corporations who were liable to pay the annual franchise tax provided for in said Section 5113, should make such report. And as we have seen, said Section 5113, R. S. Mo. 1939, having exempted such non-profit, co-operative associations or corporations from paying an annual franchise tax they were meant and intended as being the corporations exempted from making such reports by said Section 5114, R. S. Mo. 1939.

But we must now turn to the repealing clause of the new Corporation Code enacted in laws of 1943, page 410, etc., l.c. 414. We there discover that said repealing section repeals Sections 4997 to 5062, inclusive, and Sections 5065 to 5079, inclusive, and Sections 5082 to 5125, inclusive, of Article 1, Chapter 33, R. S. Mo. 1939. We then find that both Sections 5113, Laws of 1943, and 5114, R.S. Mo. 1939, would be and were included in the repeal of said Sections 5082 to 5125, inclusive, in said repealing Sections of said Act.

Now we must again turn to other sections of said Corporation Code Act, of 1943, and particularly Sections 135 and 136, on pages 475, 476 and 477, which are almost identical in their provisions as were Sections 5113, R.S. Mo. 1939, and Section 5113, Laws of Missouri, 1943, pages 407, 408, and as far as applicable, respectively, are identical with the terms of Section 5114, R. S. Mo. 1939, which was not amended by the Laws of 1943. Section 136, page 476, Laws of 1943, in the first proviso thereof, is identical in words and letters with the provision of Section 5113, in both R. S. Mo. 1939 and Laws of 1943, where they all state:

"Provided, that this law shall not apply
to corporations not organized for profit,
* * * "

Section 136, page 476, Laws of 1943, is identical with Section 5114, R. S. Mo. 1939, and which was repealed by the repealing Act of the Corporation Code Act, Laws of 1943, pages 410 and 414, in that said Section 136, uses the identical language of the said former Section, 5114, in providing that:

May 4, 1945

"Every corporation liable to the tax prescribed in the foregoing section shall make a report in writing to the Missouri tax commission, * * * "

Section 171, page 489 of said Corporation Code Act, is in its terms further affirmative of the exemption of non-profit, co-operative associations or corporations from either paying an annual franchise tax, and was exempted from making an annual report to the State Tax Commission or the State Board of Equalization as the case might be, by saying that:

"Section 171. The provisions of this Act shall be applicable to existing corporations as follows:

"(a) Those provisions of this Act requiring reports, registration statements, anti-trust affidavits, and the payment of taxes and fees, shall be applicable, to the same extent and with the same effect, to all existing corporations, domestic and foreign, which were required to make such reports, registration statements and anti-trust affidavits, and to pay such taxes and fees, prior to the enactment of this Act."

Section 171, above quoted, in saying that only such corporations are now required to pay such tax and make such report as were required to pay such tax and make such reports prior to the enactment of this Act, directly refers to non-profit, co-operative corporations, because such non-profit, co-operative corporations were exempted from paying such tax, and making such reports by the terms of Sections 5113, 5114, R. S. Mo. 1939, and Section 5113, Laws of 1943, page 408, and as a result of such exemptions were not among classes of corporations which were required to pay such annual franchise taxes, and make such annual reports when Section 171, supra, and the remainder of the Corporations Act of 1943, was enacted.

May 4, 1945

Thus it is clear, by this additional provision, that it was the definite legislative intent that non-profit, co-operative corporations, are not required by law to pay an annual franchise tax, nor are they required by law to make or file an annual corporation franchise tax report to the State Tax Commission. They are expressly exempted from paying such tax and from making such reports by the provisions of Sections 135 and 136, Laws of Missouri, 1943, pages 475, 476 and 477.

CONCLUSION

It is, therefore, the opinion of this Department that "a co-operative, not organized for profit," is not required to file an annual corporate franchise tax report.

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
Attorney-General

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